THE
Madras Law Journal Supplement.

The Acts

of the

Governor-General of India in Council

For the year 1910.

Published By

MR. S. SRINIVASA AIYER, B.A. B.L., *Manager,*

Mylapore, Madras, S.

MADRAS:

PRINTED AT THE ANANDA STEAM PRESS.

1911.

CONTENTS.

Acts of the Governor-General in Council.

			PAGE.
No	I.	An Act to provide for the better control of the Press	1
,,	II.	An Act to consolidate and amend the law relating to Government Paper Currency ..	10
,,	III.	An Act further to amend the Indian Penal Code	18
,,	IV.	An Act further to amend the Indian Companies Act, 1882	19
,,	V.	An Act to provide for the prevention of the spread of Dourine	22
,,	VI.	An Act further to amend the Indian Stamp Act, 1899	26
,,	VII.	An Act further to amend the Court-Fees Act, 1870	28
,,	VIII.	An Act further to amend the Indian Tariff Act, 1894	29
,,	IX.	An Act to amend the law relating to the supply and use of Electric Energy ..	36
,,	X.	An Act to consolidate and amend the law relating to the Indian Museum	88
,,	XI.	An Act to amend the Central Provinces Courts Act, 1904	95
,,	XII.	An Act to amend the law relating to Glanders and Farcy	100
,,	XIII.	An Act to amend the Prisons Act, 1894 ..	101
,,	XIV.	An Act to amend the Indian Emigration Act, 1908	101
,,	XV.	An Act to consolidate and amend certain Acts relating to Cantonments	104
,,	XVI.	An Act to provide for certain matters in connection with the taking of the Census	118
,,	XVII.	An Act to provide for the continuance of the Prevention of Seditious Meetings Act, 1907	124

(2) Every prosecution under this section shall be instituted by the officer in charge of the circle of issue in which the bill, hundi, note or engagement is drawn, accepted, made or issued.

Supplementary Provisions.

Abstracts of accounts.

28. An abstract of the accounts of the Department of Paper Currency, showing—

(a) the whole amount of currency notes in circulation,

(b) the amount of coin and bullion reserved, distinguishing gold from silver, and showing separately the amount of coin or bullion held by the Secretary of State for India in Council, or in transit from or to India, or in the custody of the Mint Master during coinage, and

(c) the nominal value of, and the price paid for, the securities held as part of the reserve, showing separately those held by the Secretary of State for India in Council and those held in India under section 23,

shall be made up four times in each month by the Head Commissioner, and published, as soon as may be, in the *Gazette of India.*

The Indian Paper Currency Act, 1910.

(Supplementary Provisions. The Schedule.)

Power to make rules.

29. (1) The Governor General in Council may make rules to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) fix the denominational values (not being less than five rupees) for which currency notes shall be issued;

(b) provide for the alteration of the limits of any of the circles of issue;

(c) declare the places at which currency notes shall be issued; and

(d) fix and notify the conditions upon which lost or mutilated currency notes may be paid at offices of issue.

(3) Every such rule shall be published in the *Gazette of India*, and on such publication shall have effect as if enacted in this Act.

Repeals.

30. The enactments mentioned in the Schedule are hereby repealed to the extent specified in the last column thereof:

Provided that all securities purchased and notes issued under the Indian Paper Currency Act, 1905, or any Act thereby repealed shall, if undisposed of or in circulation at the commencement of this Act, be deemed to have been respectively purchased and issued under this Act:

Provided also that all currency notes, which under section 29 of the Indian Paper Currency Act, 1905, are to be deemed to have been issued from the office of issue in the town of Cawnpore, shall still be deemed to have been issued from that office.

THE SCHEDULE.

ENACTMENTS REPEALED.

(See section 30.)

Year.	No.	Short Title.	Extent of Repeal.
1905	III	The Indian Paper Currency Act, 1905.	So much as has not been repealed.
1909	II	The Indian Paper Currency (Amendment) Act, 1909.	The whole.

THE INDIAN PENAL CODE AMENDMENT ACT, 1910.

ACT No. III OF 1910.

[Received the assent of the Governor-General on the 18th February, 1910.]

An Act further to Amend the Indian Penal Code.

WHEREAS it is expedient further to amend the Indian Penal Code; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Penal Code Amendment Act, 1910.

Substitution of new section for section 75, Indian Penal Code.

2. For section 75 of the Indian Penal Code the following shall be substituted, namely:—

"75. Whoever, having been convicted,—

(a) by a Court in British India, of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, or

(b) by a Court or tribunal in the territories of any Native Prince or State in India acting under the general or special authority of the Governor General in Council or of any Local Government, of an offence which would, if committed in British India, have been punishable under those Chapters of this Code with like imprisonment for the like term,

shall be guilty of any offence punishable under either of those Chapters with like imprisonment for the like term, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years."

THE INDIAN COMPANIES AMENDMENT ACT, 1910.

ACT NO. IV OF 1910.

[Received the assent of the Governor-General on the 25th February 1910.]

An Act further to Amend the Indian Companies Act, 1882.

WHEREAS it is expedient further to amend the Indian Companies Act, 1882; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Indian Companies (Amendment) Act, 1910.

Insertion of new sections after section 73.

2. After section 73 of the Indian Companies Act, 1882, the following shall be inserted, namely:—

"*Payment of interest out of capital.*

Power of Company to pay interest out of capital in certain cases.

"73 A. Where any shares of a Company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant which cannot be made profitable for a lengthened period, the Company may pay interest on so much of that share capital as is for the time being paid

up for the period and subject to the conditions and restrictions in this section mentioned, and may charge the same to capital as part of the cost of construction of the work or building, or the provision of plant:

Provided that—

(*1*) no such payment shall be made unless the same is authorized by the Company's articles of association or by special resolution;

(*2*) no such payment, whether authorized by the articles of association or by special resolution, shall be made without the previous sanction of the Governor-General in Council;

(*3*) before sanctioning any such payment, the Governor-General in Council may, at the expense of the Company, appoint a person to inquire and report to him as to the circumstances of the case, and may before making the appointment, require the Company to give security for the payment of the costs of the inquiry;

(4) the payment shall be made only for such period as may be determined by the Governor-General in Council and such period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided;

(5) the rate of interest shall in no case exceed four per cent per annum or such lower rate as the Governor-General in Council may, by notification in the *Gazette of India*, prescribe;

(6) the payment of the interest shall not operate as a reduction of the amount paid up on the shares in respect of which it is paid;

(7) the accounts of the Company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate;

(8) nothing in this section shall affect any Company to which the Indian Railway Companies Act, 1895, or the Indian Tramways Act, 1902, applies.

Re-issue of Redeemed Debentures.

Power to re-issue redeemed debentures in certain cases.

"73 B. (1) Where either before or after the passing of this Act a Company has redeemed any debentures previously issued, the Company, unless the articles of association or the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the Company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power, and shall be deemed always to have had power, to keep the debentures alive for the purposes of re-issue, and where a Company has purported to exercise such a power the Company shall have power, and shall be deemed always to have had power, to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have, and shall be deemed always to have had, the same rights and priorities as if the debentures had not previously been issued.

(2) Where with the object of keeping debentures alive for the purpose of re-issue they have either before or after the passing of this Act been transferred to a nominee of the Company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section.

(3) Where a Company has either before or after the passing of this Act deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the Company having ceased to be in debit whilst the debentures remained so deposited.

(4) The re-issue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a Company, whether the re-issue or issue was made before or after the passing of this Act, shall be treated as the issue of a new debenture for the purposes of stamp-duty, but it shall not be so treated for the purposes of any provision limiting the amount or number of debentures to be issued :

Provided that any person lending money on the security of a debenture re-issued under this section which appears to be duly stamped may give the debenture in evidence in any proceedings for enforcing his security without payment of the stamp-duty or any penalty in respect thereof, unless he had notice or, but for his negligence, might have discovered, that the debenture was not duly stamped, but in any such case the Company shall be liable to pay the proper stamp-duty and penalty.

(5) Nothing in this section shall prejudice—

(a) the operation of any decree or order of a Court of competent jurisdiction passed or made before the date of the passing of this Act as between the parties to the proceedings in which the decree was passed or the order made, and any appeal from any such decree or order shall be decided as if this Act had not been passed; or

(b) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a Company by its debentures or the securities for the same."

DOURINE ACT, 1910.

ACT NO. V OF 1910.

[Received the assent of the Governor-General on the 25th February 1910.]

An Act to provide for the prevention of the spread of Dourine.

WHEREAS it is expedient to provide for the prevention of the spread of dourine; It is hereby enacted as follows:—

Short title and extent.

1. *(1)* This Act may be called the Dourine Act, 1910.

(2) This section extends to the whole of British India: the rest of this Act extends only to such areas as the Local Government may, by notification in the local Official Gazette, direct.

Definitions.

2. *(1)* In this Act, the expressions "inspector" and "veterinary practitioner" mean, respectively, the officers appointed as such under this Act, acting within the local limits for which they are so appointed.

(2) The provisions of this Act in so far as they relate to entire horses shall, if the Local Government, by notification as aforesaid so directs, apply also to entire asses used for mule-breeding purposes.

Registration of horses.

3. The Local Government may, by notification as aforesaid, make such orders as it thinks fit directing and regulating the registration of entire horses maintained for breedng purposes.

Appointment of inspectors and veterinary practitioners.

4. (1) The Local Government may, by notification as aforesaid, appoint any persons it thinks fit to be inspectors, and any qualified veterinary surgeons to be veterinary practitioners, under this Act, and to exercise and perform, within any area prescribed by the notification, the powers conferred and duties imposed by this Act upon such officers respectively.

(2) Every person so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code.

Powers of inspector.

5. An inspector may, subject to such rules as the Local Government may make in this behalf,—

(a) enter and search any building, field or other place for the purpose of ascertaining whether there is therein any horse which is affected with dourine; and

(b) prohibit, by order in writing, the owner or keeper of any horse, which in his opinion is affected with dourine, from using such horse for breeding purposes,

pending examination by the veterinary practitioner.

Duties of inspector.

6. An inspector issuing an order under section 5, clause *(b)*, shall forthwith forward a copy of such order to the veterinary practitioner.

Inspection of horses.

7. A veterinary practitioner receiving a copy of an order forwarded under section 6 shall, as soon as possible after receipt of such copy, examine the horse mentioned therein, and may for such purpose enter any building, field or other place.

Powers of veterinary practitioner.

8. A veterinary practitioner may—

(a) cancel any order issued under section 5, clause (*b*) ; or,

(b) if on microscopical examination he finds that any horse is affected with dourine,—

(i) in the case of an entire horse, cause it to be castrated,

(ii) in the case of a mare, cause it to be branded in such manner as he may direct, or with the previous sanction of the Commissioner or such other officer as the Local Government may appoint in this behalf, cause it to be destroyed.

Compensation for horse destroyed, etc.

9. When any horse is castrated or destroyed under section 8, the market-value of such horse immediately before it became affected with dourine shall be ascertained; and the Local Government shall pay as compensation to the owner thereof—

(a) in the case of a mare which has been destroyed, or of an entire horse which has died in consequence of castration, such market-value, and,

(b) in the case of an entire horse which survives castration, half the amount by which such value has been diminished owing to infection with dourine and castration.

Settlement of compensation.

10. (1) A veterinary practitioner may award, as compensation to be paid under section 9 in respect of each horse castrated or destroyed under section 8, a sum not exceeding two hundred and fifty rupees.

(2) If in the opinion of the veterinary practitioner the amount which should be paid as such compensation exceeds two hundred and fifty rupees, he shall report accordingly to the Collector, who shall decide the amount to be so paid.

Committees for hearing appeals.

11. (1) The Local Government shall, by rules published in the local official Gazette, make provision for the constitution of a committee or committees for the hearing of appeals from decisions under section 10.

(2) Such rules shall provide that not less than one member of any committee constituted thereunder shall be a person not in the employ of Government or of a local authority.

12. Any owner may, within two months from the date of a decision under section 10, appeal against such decision to the committee constituted in that behalf by rules made under section 11, and the decision of such committee shall be final.

Appeals.

13. *(1)* Whoever, being an inspector appointed under this Act, vexatiously and unnecessarily enters or searches any field, building or other place, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Vexatious entries and searches.

(2) No prosecution under this section shall be instituted after the expiry of three months from the date on which the offence has been committed.

Rules.

14. *(1)* The Local Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules as aforesaid may—

(a) regulate entries, searches and orders by inspectors under section 5;

(b) regulate the action to be taken by veterinary practitioners under section 8; and

(c) make provision for the payment of compensation to the owner of any mare branded under section 8.

(3) All such rules shall be published in the local official Gazette, and, on such publication, shall have effect as if enacted in this Act.

(4) In making any rule under this section the Local Government may direct that a breach of it shall be punishable with fine which may extend to fifty rupees.

Penalties.

15. Whoever uses or permits to be used for breeding purposes—

(a) any horse which has not been registered in accordance with the requirements of a notification under section 3, or

(b) any horse in respect of which an order under section 5, clause *(b)*, is in force, or

(c) any mare which has been branded in pursuance of section 8, clause (b),

shall be punishable with fine which may amount, in the case of a first conviction to fifty rupees, or, in the case of a second or subsequent conviction, to one hundred rupees.

Protection to persons acting under Act.

16. No suit, prosecution or other legal proceeding shall lie against any person for anything which is, in good faith, done or intended to be done under this Act.

THE INDIAN STAMP (AMENDMENT) ACT, 1910.

ACT No. VI OF 1910.

[Received the assent of the Governor-General on the 4th March, 1910.]

An Act further to amend the Indian Stamp Act, 1899.

WHEREAS it is expedient further to amend the Indian Stamp Act, 1899; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Stamp (Amendment) Act, 1910.

Amendment of Act II, 1899, section 8.

2. In section 8, sub-section (*1*), of the Indian Stamp Act, 1899 (hereinafter referred to as "the said Act"), for the words "eight annas per centum" the words "one per centum" shall be substituted.

Amendment of Act II, 1899, Schedule I.

3. In Schedule I of the said Act the following amendments shall be made, namely:—

(i) For Article No. 5 the following shall be substituted namely :—

"5. AGREEMENT OR MEMORANDUM OF AN AGREEMENT—

(*a*) if relating to the sale of a bill of exchange :	Two annas.
(*b*) if relating to the sale of a Government security or share in an incorporated company or other body corporate ;	Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the security or share.
(*c*) if not otherwise provided for.	Eight annas.
Exemptions.	
Agreement or memorandum of agreement.—	
(*a*) for or relating to the sale of goods or merchandise exclusively, not being a NOTE OR MEMORANDUM chargeable under No. 43 ;	
(*b*) made in the form of tenders to the Government of India for or relating to any loan ;	
(*c*) Made under the European Vagrancy Act, 1874, Section 17.	

(II) In Article No. 13, for clause (*b*) the following shall be substituted, namely :—

(*b*) where payable otherwise than on demand, but not more than one year after date or sight—		If drawn singly.			If drawn in set of two, for each part of the set.			If drawn in set of three, for each part of the set.		
	Rs.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
if the amount of the bill or note does not exceed	200	0	2	0	0	1	0	0	1	0
if it exceeds Rs. 200 and does not exceed	400	0	4	0	0	2	0	0	2	0
Do 400 do	600	0	6	0	0	3	0	0	2	0
Do 600 do	1,000	0	12	0	0	6	0	0	4	0
Do 1,000 do	1,200	1	2	0	0	9	0	0	6	0
Do 1,200 do	1,600	1	8	0	0	12	0	0	8	0
Do 1,600 do	2.500	2	4	0	1	2	0	0	12	0
Do 2,500 do	5,000	4	8	0	2	4	0	1	8	0
Do 5,000 do	7,500	6	12	0	3	6	0	2	4	0
Do 7,500 do	10,000	9	0	0	4	8	0	3	0	0
Do 10,000 do	15,000	13	8	0	6	12	0	4	8	0
Do 15 000 do	20,000	18	0	0	9	0	0	6	0	0
Do 20,000 do	25,000	22	8	0	11	4	0	7	8	0
Do 25,000 do	30,000	27	0	0	13	8	0	9	0	0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000 ..		9	0	0	4	8	0	3	0	0

(iii) For Article No. 27 the following shall be substituted, namely :—

"27. **DEBENTURE** (whether a mortgage debenture or not) being a marketable security transferable—	
(*a*) By endorsement or by a separate instrument of transfer ;	The same duty as Bond (No. 15) for the same amount.
(*b*) by delivery	The same duty as a conveyance (No. 23) for a consideration equal to the face amount of the debenture.
Explanation :—The term 'Debenture' includes any interest coupons attached thereto, but the amount of such coupons shall not be included in estimating the duty.	
Exemption. A debenture issued by an incorporated company or other body corporate in terms of a registered mortgage-deed, duly stamped in respect of the amount of debentures to be issued thereunder, whereby the company or body borrowing makes over, in whole or in part, their property to trustees for the benefit of the debenture-holders: provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.	
See also BOND (No. 15) and Sections 8 and 55."	

(iv) For Article No. 43 the following shall be substituted, namely:—

"43 NOTE OR MEMORANDUM sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal.—	
(*a*) of any goods exceeding in value twenty rupees.	Two annas.
(*b*) of any stock or marketable security exceeding in value twenty rupees.	Subject to a maximum of ten rupees, one anna for every Rs. 10,000 or part thereof of the value of the stock or security.

(v) In Article No. 59, in the second column for the words "Three-quarters of" the words "One and half times" and in the *Exemptions*, for the word "three-quarters" each time it occurs the word "one and half" shall be substituted.

(vi) In Article No. 62, in the second column, for the word "One-quarter", where it occurs opposite clauses (*a*) and (*b*) the word "One-half" shall be substituted.

COURT-FEES (AMENDMENT) ACT, 1910.

ACT No. VII OF 1910.

[Received the assent of the Governor-General on the 4th March, 1910.]

An Act Further to amend the Court-fees Act, 1870.

WHEREAS it is expedient further to amend the Court-fees Act, 1870 ; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Court-fees (Amendment) Act, 1910.

Amendment of VII, 1870, Schedule.

2. In Schedule I to the Court-fees Act 1870, as amended by the Succession Certificate Act, 1889, the following amendments shall be made, namely :—

(i) in article 11, for the entries in the second and third columns, the following shall be substituted, namely :—

When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per centum on such amount or value.
When such amount or value exceeds ten thousand rupees, but does not exceed fifty ousand rupees.	Two and one-half per centum on such amount or value.

(i) In article No. 11.—*continued.*

When such amount or value exceeds fifty thousand rupees.	Three per centum on such amount or value.
Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant	

(ii) in article 12 A, for the entries in the second and third columns, the following shall be substituted, namely :

(1) As regards debts and securities.	The same fees as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be.
(2) As regards other property in respect of which the certificate is granted—	
When the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per centum on such amount or value.
When the amount or value of such property exceeds one thousand rupees but does not exceed ten thousand rupees,	Two and one-half per centum or such amount or value.
When such amount or value exceeds fifty thousand rupees.	Three per centum on such amount or value.

Exemption of certain probates, letters of administration and certificates.

3. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not been issued.

THE INDIAN TARIFF(AMENDMENT)ACT, 1910.

ACT No. VIII OF 1910.

[Received the assent of the Governor-General on the 4th March 1910.]

An Act further to amend the Indian Tariff Act, 1894.

WHEREAS it is expedient further to amend the Indian Tariff Act, 1894; It is hereby enacted as follows :—

Short title and commencement.

1. (*1*) This Act may be called the Indian Tariff (Amendment) Act, 1910; and

(2) It shall be deemed to have come into force on the 25th day of February 1910.

2. For Schedule III to the Indian Tariff Act, 1894, as amended by the Indian Tariff Act (1894) Amendment Act, 1896, the Indian Tariff (Amendment) Act, 1906, and the Indian Tariff (Amendment) Act, 1908, the Schedule appended to this Act shall be substituted.

Substitution of new Schedule for Schedule III, Act VIII, 1894.

3. In Schedule IV to the Indian Tariff Act, VIII of 1894, as amended by the Indian Tariff Act (1894) Amendment Act, (1896), the following amendments shall be made, namely :—

Amendment of Schedule IV, Act, VIII 1894.

(ii) In No. 11, the entries—

"Tobacco, unmanufactured	..	..	Free
Tobacco, manufactured	..	*ad valorem*	Five per cent."

shall be omitted.

(ii) In No. 15, the entries—

"Silver bullion or coin except Government current coin of India, which is free	..	*ad valorem*	Five per cent."

shall be omitted.

(iii) In No. 16, in the fifth column, opposite the entry "Petroleum", for the words "One anna" the words "One anna and six pies" shall be substituted.

4. The Indian Tariff (Amendment) Act, 1906, and the Indian Tariff (Amendment) Act, 1908, are hereby repealed.

Repeal.

SCHEDULE III.—(Import Tariff.)

Liquors, Opium, Salt, Salted Fish, Tobacco and Silver.

No.	Names of Articles.	Per.	Rate of duty.
1	Liquors—		*R. a.*
	Ale, beer and porter	Imperial gallon or six quart bottles.	0 3
	Cider and other fermented liquors		
	Liqueurs and sweetened spirits, cordials, bitters, perfumed spirits and toilet preparations containing spirit	,,	13 0

SCHDULE III.—(IMPORT TARIFF.)—*continued.*

No.	Names of Articles.	Per.	Rate of duty.
			Rs. a.
	Spirit which has been rendered effectually and permanently unfit for human consumption.	*ad valorem* ..	Five per cent.
	Spirit used in drugs, medicines or chemicals.	Imperial gallon or six quart bottles of the strength of London proof.	7 13 and the duty to be increased or reduced in proportion as the strength of the spirit exceeds or is less than London proof
	Spirit, other sorts	,,	9 12 and the duty to be increased or in reduced proportion as the strength of the spirit exceeds or is less than Londonproof.
	WINES—		
	Champagne and all other sparkling wines not containing more than 42 per cent. of proof spirit.	Imperial gallon or six quart bottles.	3 12
	All other sorts of wines not containing more than 42 per cent. of proof spirit.	,,	1 8
	Provided that all sparkling and still wines containing more than 42 per cent. of proof spirit shall be liable to duty at the rate applicable to spirit, other sorts ...		
2	OPIUM and its alkaloids ..	seer of 80 tolas.	24 0
3	SALT	Indian maund of 82⅔ lb. avoirdupois weight	The rate at which excise-duty is for the time being leviable on salt manufactured in the place where the import takes place.
4	SALTED FISH, wet or dry.	Indian maund of 82⅔ lb. avoirdupois weight.	Such rate or rates of duty, not exceeding twelve annas as the Governor - General in Council may, by notification in the Gazette of India from time to time prescribe.

SCHEDULE III.—(IMPORT TARIFF.)—*concluded.*

No.	Names of Articles.	Per.	Rate of duty.
			Rs. *a.*
5	TOBACCO—		
	Unmanufactured	pound ..	1 8
	Cigars	" ...	2 8
	Cigarettes weighing less than 3 lbs. per thousand ..	thousand ...	5 0
	Cigarettes weighing 3 lbs. or more per thousand	pound ..	2 0
	Manufactured, other sorts ..	" ..	1 10
6	SILVER bullion or coin, except current coin, of the Government of India, which is free.	ounce ..	0 4

THE INDIAN ELECTRICITY ACT.

ACT No. IX OF 1910.

[Received the assent of the Governor-General on the 18th March, 1910.]

CONTENTS.

PART I.

PRELIMINARY.

SECTIONS.

1. Short title, extent and commencement.
2. Definitions.

PART II.

SUPPLY OF ENERGY.

Licenses.

3. Grant of licenses.
4. Revocation or amendment of licenses.
5. Provisions where license of licensee, not being a local authority, is revoked.
6. Provisions where license of local authority is revoked.
7. Purchase of undertaking.
8. Provisions where no purchase and license revoked with consent of licensee.
9. Licensee not to purchase, or associate himself with, other licensed undertakings or transfer his undertaking.
10. General power for Government to vary terms of purchase.
11. Annual accounts of licensee.

SECTIONS.

Works.

12. Provisions as to the opening and breaking up of streets, railways and tramways.

13. Notice of new works.

14. Alteration of pipes or wires.

15. Laying of electric supply lines or other works near sewers, pipes or other electric supply-lines or works.

16. Streets, railways, tramways, sewers, drains or tunnels broken up to be reinstated without delay.

17. Notice to telegraph-authority.

18. Aerial lines.

19. Compensation for damage.

Supply.

20. Power for licensee to enter premises and to remove fittings or other apparatus of licensee.

21. Restrictions on licensee's controlling or interfering with use of energy.

22. Obligation on licensee to supply energy.

23. Charges for energy to be made without undue preference.

24. Discontinuance of supply to consumer neglecting to pay charge.

25. Exemption of electric supply-lines or other apparatus from attachment in certain cases.

26. Meters.

27. Supply of energy outside area of supply.

PART III.

SUPPLY, TRANSMISSION AND USE OF ENERGY BY NON-LICENSEES.

28. Sanction required by non-licensees in certain cases.

29. Power for non-licensees to break up streets.

30. Control of transmission and use of energy.

PART IV.

GENERAL.

Protective Clauses.

31. Protection of railways and canals, docks, wharves and piers.

32. Protection of telegraphic, telephonic and electric-signalling lines.

SECTIONS.

33. Notice of accidents and injuries.

34. Prohibition of connection with earth, and power for Government to interfere in certain cases of default.

Administration and Rules.

35. Advisory Boards.

36. Appointment of Electric Inspectors.

37. Power for Government to make rules.

38. Further provisions respecting rules.

Criminal Offences and Procedure.

39. Theft of energy.

40. Penalty for maliciously wasting energy or injuring works.

41. Penalty for unauthorized supply of energy by non-licensees.

42. Penalty for illegal or defective supply or for non-compliance with order.

43. Penalty for illegal transmission or use of energy.

44. Penalty for interference with meters or licensee's works and for improper use of energy.

45. Penalty for extinguishing public lamps.

46. Penalty for negligently wasting energy or injuring works.

47. Penalty for offences not otherwise provided for.

48. Penalties not to affect other liabilities.

49. Penalties where works belong to Government.

50. Institution of prosecutions.

Supplementary.

51. Exercise in certain cases of powers of telegraph-authority.

52. Arbitration.

53. Service of notices, orders or documents.

54. Recovery of sums recoverable under certain provisions of Act

55. Delegation of certain functions of Local Government to Electric Inspectors.

56. Protection for acts done in good faith.

57. Amendment of the Land Acquisition Act, 1894.

58. Repeals and savings.

THE SCHEDULE.

PROVISIONS TO BE DEEMED TO BE INCORPORATED WITH, AND TO FORM PART OF, EVERY LICENSE GRANTED UNDER PART II SO FAR AS NOT ADDED TO, VARIED OR EXCEPTED BY THE LICENSE.

Security and accounts.

I. Security for execution of works of licensee not being local authority.

II. Audit of accounts of licensee not being local authority.

III. Separate accounts.

Compulsory works and supply.

IV. Execution of work after commencement of license.

V. Provisions as to laying down of further distributing mains.

VI. Requisition for supply to owners or occupiers in vicinity.

VII. Provisions as to laying electric supply-lines under special agreement.

VIII. Supply for public lamps.

Supply by bulk-licensees.

IX. Special provisions applying to supply by bulk-licensees

Charges.

X. Methods of charging.

XI. Maximum charges.

XII. Charge for supply for public lamps.

Testing and inspection.

XIII. Licensee to establish testing stations and keep instruments for testing.

XIV. Facilities for testing.

XV. Testing of works.

Plans.

XVI. Plan of area of supply to be made and kept open for inspection.

Additional notice of certain works.

XVII. Notice to Electric Inspector.

THE INDIAN ELECTRICITY ACT.

An Act to amend the law relating to the supply and use of electrical energy.

WHEREAS it is expedient to amend the law relating to the supply and use of electrical energy; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Electricity Act, 1910.

(*2*) It extends to the whole of British India, inclusive of British Baluchistan and the Santhal Parganas; and

(*3*) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, direct in this behalf.

Definitions.

2. In this Act, expressions defined in the Indian Telegraph Act, 1885, have the meanings assigned to them in that Act, and, unless there is anything repugnant in the subject or context,—

(*a*) "aerial line" means any electric supply-line which is placed above ground and in the open air.

(*b*) "area of supply" means the area within which alone a licensee is for the time being authorised by his license to supply energy:

(*c*) "consumer" means any person who is supplied with energy by licensee, or whose premises are for the time being connected for the purposes of a supply of energy with the works of a licensee:

(*d*) "daily fine" means a fine for each day on which an offence is continued after conviction therefor:

(*e*) "distributing main" means the portion of any main with which a service line is, or is intended to be, immediately connected:

(*f*) "electric supply-line" means a wire, conductor or other means used for conveying, transmitting or distributing energy together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or

supporting the same or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy :

(*g*) "energy" means electrical energy when generated, transmitted, supplied or used for any purpose except the transmission of a message :

(*h*) "licensee" means any person licensed under Part II to supply energy :

(*i*) "main" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee to the public.

(*j*) "prescribed" means prescribed by rules made under this Act :

(*k*) "public lamp" means an electric lamp used for the lighting of any street :

(*l*) "service line" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee to a consumer either from a distributing main or immediately from the licensee's premises :

(*m*) "street" includes any way, road, lane, square, court, alley, passage or open space, whether a thoroughfare or not, over which the public have a right of way, and also the roadway and footway over any public bridge or causeway : and

(*n*) "works" includes electric supply-lines and any buildings, machinery or apparatus required to supply energy and to carry into effect the objects of license granted under Part II.

PART II.

SUPPLY OF ENERGY.

Licenses.

Grant of licenses.

3. (*1*) The Local Government may, on application made in the prescribed form and on payment of the prescribed fee (if any), grant to any person a license to supply energy in any specified area, and also to lay down or place

electric supply-lines for the conveyance and transmission of energy,—

(*a*) where the energy to be supplied is to be generated outside such area, from a generating station situated outside such area to the boundary of such area, or

(*b*) where energy is to be conveyed or transmitted from any place in such area to any other place therein, across an intervening area not included therein, across such area.

(2) In respect of every such license and the grant thereof the following provisions shall have effect, namely :—

(*a*) any person applying for a license under this Part shall publish a notice of his application in the prescribed manner and with the prescribed particulars, and the license shall not be granted—

(i) until all objections received by the Local Government with reference thereto have been considered by it.

Provided that no objection shall be so considered unless it is received before the expiration of three months from the date of the first publication of such notice as aforesaid; and

(ii) until, in the case of an application for a license for an area including the whole or any part of any cantonment, fortress, arsenal, dockyard or camp or of any building or place in the occupation of the Government for naval or military purposes, the Local Government has ascertained that there is no objection to the grant of the license on the part of the General Officer. Commanding the Division;

(*b*) where an objection is received from any local authority concerned, the Local Government shall, if in its opinion the objection is insufficient, record in writing and communicate to such local authority its reasons for such opinion;

(*c*) no application for a license under this Part shall be made by any local authority except in pursuance of a resolution passed at a meeting of such authority held after

one month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given;

(*d*) a license under this Part—

(i) may prescribe such terms as to the limits within which, and the conditions under which, the supply of energy is to be compulsory or permissive, and as to the limits of price to be charged in respect of the supply of energy, and generally as to such matters as the Local Government may think fit; and

(ii) save in cases in which under section 10, clause (*b*), the provisions of section 5 and 7, or either of them, have been declared not to apply, every such license shall declare whether any generating station to be used in connection with the undertaking shall or shall not form part of the undertaking for the purpose of purchase under section 7;

(*e*) the grant of a license under this Part for any purpose shall not in any way hinder or restrict the grant of a license to another person within the same area of supply for a like purpose;

(*f*) the provisions contained in the Schedule shall be deemed to be incorporated with, and to form part of, every license granted under this Part, save in so far as they are expressly added to, varied or excepted by the license, and shall, subject to any such additions, variations or exceptions which the Local Government is hereby empowered to make. apply to the undertaking authorized by the license:

Provided that, where a license is granted in accordance with the provisions of clause IX of the Schedule for the supply of energy to other licensees for distribution by them, in so far as such license relates to such supply, the provisions of clauses IV, V. VI, VII, VIII and XII of the Schedule shall not be deemed to be incorporated with the license.

(3) The exercise of the powers conferred on the Local Government by this section shall be subject to the control of the Governor-General in Council.

Revocation or amendment of licensed.

4. (*1*) The Local Government may, if in its opinion the public interest so requires, revoke a license in any of the following cases, namely :—

(*a*) where the licensee, in the opinion of the Local Government, makes wilful and unreasonably prolonged default in doing anythiug required of him by or under this Act;

(*b*) where the licensee breaks any of the terms or conditions of his license the breach of which is expressly declared by such license to render it liable to revocation.

(*c*) where the licensee fails, within the period fixed in this behalf by his license or any longer period which the Local Government may substitute therefor by order under sub-section (*3*), clause (*b*), and before exercising any of the powers conferred on him thereby in relation to the execution of works,—

(i) to show, to the satisfaction of the Local Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed on him by his license, or

(ii) to make the deposit or furnish the security required by his license;

(*d*) where the licensee is, in the opinion of the Local Government, unable, by reason of his insolvency, fully and efficiently to discharge the duties and obligations imposed on him by his license.

(*2*) Where the Local Government might, under sub-section (1), revoke a license, it may, instead of revoking the license, permit it to remain in force subject to such further terms and conditions as it thinks fit to impose, and any further terms or conditions so imposed shall be binding upon, and be observed by, the licensee, and shall be of like force and effect as if they were contained in the license.

(3) Where in its opinion the public interest so permits, the Local Government may, on the application or with the consent of the licensee, and, if the licensee is not a local authority, after consulting the local authority (if any) concerned,—

(a) revoke a license as to the whole or any part of the area of supply upon such terms and conditions as it thinks fit, or

(b) make such alterations or amendments in the terms and conditions of a license, including the provisions specified in section 3, sub-section (2), clause *(f)*, as it thinks fit.

Provisions where license of licensee, not being a local authority, is revoked.

5. Where the Local Government revokes, under section 4, sub-section (1), the license of a licensee, not being a local authority, the following provisions shall have effect, namely:—

(a) the Local Government shall serve a notice of the revocation upon the licensee, and, where the whole of the area of supply is included in the area for which a single local authority is constituted, upon that local authority also, and shall in the notice fix a date on which the revocation shall take effect; and on and with effect from that date all the powers and liabilities of the licensee under this Act shall absolutely cease and determine;

(b) where a notice has been served on a local authority under clause (a), the local authority may, within three months after the service of the notice, and with the written consent of the Local Government, by notice in writing, require the licensee to sell, and thereupon the licensee shall sell, the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking, other than a generating station declaredby the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute, determined by arbitration:

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair

market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof, and to the circumstance that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking, but without any addition in respect of compulsory purchase or of goodwill or of any profits which may be or might have been made from the undertaking, or of any similar consideration;

(c) where no purchase has been effected by the local authority under clause *(b)*, and any other person is willing to purchase the undertaking, the Local Government may, if it thinks fit, with the consent of the licensee, or without the consent of the licensee in case the price is not less than that for which the local authority might have purchased the same, require the licensee to sell, and thereupon the licensee shall sell the undertaking to such other person;

(*d*) where no purchase has been effected under clause *(b)* or clause *(c)* within such time as the Local Government may consider reasonable, or where the whole of the area of supply is not included in the area for which a single local authority is constituted, the Local Government shall have the option of purchasing the undertaking and, if the Local Government elects to purchase, the licensee shall sell the undertaking to the Local Government upon terms and conditions similar to those set forth in clause (*b*);

(*e*) where a purchase has been effected under any of the preceding clauses,—

(i) the undertaking shall vest in the purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(ii) the revocation of the license shall extend only to the revocation of the rights, powers, authorities, duties and obligations of the licensee from whom the undertaking is purchased, and, save as aforesaid, the license shall remain in full force, and the purchaser shall be deemed to be the licensee :

Provided that where the Local Government elects to purchase under clause (*d*), the license shall, after purchase, in so far as the Local Government is concerned, cease to have any further operation ;

(*f*) where no purchase has been effected under any of the foregoing clauses, the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit :

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exercisaable, the Local Government may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such removal and reinstatement from the licensee ;

(*g*) if the licensee has been required to sell the undertaking, and if the sale has not been completed by the date fixed in the notice issued under clause (*a*), the purchaser may, with the previous sanction of the Local Government, work the undertaking pending the completion of the sale.

Provisions where license of local authority is revoked.

6. (*1*) Where the Local Government revokes the license of a local authority under section 4, sub-section (*1*), and any person is willing to purchase the undertaking, the Local Government may, if it thinks fit, require the local authority to sell, and thereupon the local authority shall sell, the undertaking to such person on such terms as the Local Government thinks just.

(2) Where no purchase has been effected under sub-section (1), the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit:

Provided that, if the licensee does not exercise such option within a period of six months from the date on which the same became exercisable, the Local Government may forthwith cause the works of the licensee in, under, over, along or across any street to be removed and every such street to be reinstated, and recover the cost of such romoval and reinstatement from the licensee.

Purchaser of undertaking.

7. (1) Where a license has been granted to any person not being a local authority, and the whole of the area of supply is included in the area for which a single local authority is constituted, the local authority shall, on the expiration of such period, not exceeding fifty years, and of every such subsequent period, not exceeding twenty years, as shall be specified in this behalf in the license, have the option of purchasing the undertaking, and, if the local authority, with the previous sanction of the local Government, elects to purchase, the licensee shall sell the undertaking to the local authority on payment of the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him for, the purposes of the undertaking other than a generating station declared by the license not to form part of the undertaking for the purpose of purchase, such value to be, in case of difference or dispute, determined by arbitration:

Provided that the value of such lands, buildings, works, materials and plant shall be deemed to be their fair market-value at the time of purchase, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant, and to the state of repair thereof, and to the circumstances that they are in such a position as to be ready for immediate working, and to the suitability of the same for the purposes of the undertaking:

Provided also that there shall be added to such value as aforesaid such percentage, if any, not exceeding twenty per centum on that value as may be specified in the license, on account of compulsory purchase.

(*2*) Where—

(*a*) the local authority does not elect to purchase under sub-section (*1*), or

(*b*) the whole of the area of supply is not included in the area for which a single local authority is constituted, or

(*c*) a licensee supplies energy from the same generating station to two or more areas of supply, each controlled by its own local authority, and has been granted a license in respect of each area of supply,

the Local Government shall have the like option upon the like terms and conditions.

(*3*) Where a purchase has been effected under sub-section (*1*) or sub-section (*2*),—

(*a*) the undertaking shall vest in purchasers free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking :

Provided that any such debts, mortgages or similar obligations shall attach to the purchase-money in substitution for the undertaking; and

(*b*) save as aforesaid, the license shall remain in full force and the puchaser shall be deemed to be the licensee:

Provided that where the Local Government elects to purchase under sub-section (*2*), the license shall, after purchase, in so far as the Local Government is concerned, cease to have any futher operation.

(*4*) Not less than two years' notice in writing of any election to purchase under this section shall be served upon the licensee by the local authority or the Local Government, as the case may be.

(*5*) Notwithstanding anything hereinbefore contained, a local authority may, with the previous sanction of the Local Government, waive its option to purchase and enter into an agreement with the licensee for the working by him of the undertaking until the expiration of the next subsequent period referred to in sub-section (*1*), upon such terms and conditions as may be stated in such agreement.

Provisions where no purchase and license revoked with consent of licensee.

8. Where, on the expiration of any of the periods referred to in section 7, sub-section (*1*), neither a local authority nor the Local Government purchases the undertaking and the license is, on the application or with the consent of the licensee, revoked, the licensee shall have the option of disposing of all lands, buildings, works, materials and plant belonging to the undertaking in such manner as he may think fit:

Provided that, if the licensee does not exercise such option within a period of six months, the Local Government may proceed to take action as provided in section 5, clause (*f*), proviso.

Licensee not to purchase, or associate himself with other licensed undertaking or transfer his undertaking.

9. (*1*) The licensee shall not, at any time, without the previous consent in writing of the Local Government, acquire, by purchase or otherwise, the license or the undertaking of, or associate himself so far as the business of supplying energy is concerned with, any person supplying, or intending to supply, energy under any other license, and, before applying for such consent, the licensee shall give not less than one month's notice of the application to every local authority, both in the licensee's area of supply, and also in the area or district in which such other person supplies, or intends to supply, energy:

Provided that nothing in this sub-section shall be construed to require the consent of the Local Government for the supply of energy by one licensee to another in accordance with the provisions of clause IX of the Schedule.

(*2*) The licensee shall not, at any time, assign his license or transfer his undertaking or any part thereof, by sale, mortgage, lease, exchange or otherwise without the previous consent in writing of the Local Government.

(*3*) Any agreement relating to any transaction of the nature described in sub-section (*1*) or sub-section (*2*), unless made with, or subject to, such consent as aforesaid, shall be void.

General power for Government to vary terms of purchase.

10. Notwithstanding anything in sections 5, 7 and 8, the Local Government may, with the previous sanction of the Governor-General in Council, in any license to be granted under this Act,—

(*a*) vary the terms and conditions upon which, and the periods on the expiration of which the licensee shall be bound to sell his undertaking, or

(*b*) direct that, subject to such conditions and restrictions (if any) as it may think fit to impose, the provisions of the said sections or any of them shall not apply.

Annual accounts of licensee.

11. (*1*) Every licensee shall, unless expressly exempted from the liability by his license, or by order in writing of the Local Government, prepare and render to the Local Government or to such authority as the Local Government may appoint in this behalf, on or before the prescribed date in each year, an annual statement of accounts of his undertaking made up to such form, and containing such particulars, as may be prescribed in this behalf.

(*2*). The licensee shall keep copies of such annual statement at his office and sell the same to any applicant at a price not exceeding five rupees per copy.

Works.

Provisions as to opening and breaking up of streets, railways and tramways.

12. (*1*) Any licensee may from time to time, but subject always to the terms and conditions of his license, within the area of supply, or, when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area—

(*a*) open and break up the soil and pavement of any street, railway or tramway;

(*b*) open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(*c*) lay down and place electric supply-lines and other works;

(*d*) repair, alter or remove the same; and

(*e*) do all other acts necessary for the due supply of energy.

(*2*) Nothing contained in sub-section (*1*) shall be deemed to authorize or empower a licensee, without the consent of the local authority or of the owner and occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over, or under any land not dedicated to public use whereon, whereover or whereunder any electric supply-line or work has not already been lawfully laid down or placed by such licensee:

Provided that any support of an aerial line or any stay or strut required for the sole purpose of securing in position any support of an aerial line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate or, in a Presidency-town or Rangoon, the Commissioner of Police, by order in writing so directs:

Provided, also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town or Rangoon, the Commissioner of Police, may by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under sub-section *(2)* the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or of annual rent, or of both, which should, in his opinion, be paid by the licensee to the owner or occupier.

(4) Every order made by a District Magistrate or a Commissioner of Police under sub-section (2) shall be subject to revision by the Local Government.

(5) Nothing contained in sub-section (1) shall be deemed to authorize or empower any licensee to open or break up any street not repairable by the Government or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorized to break up by his license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway, unless with the written consent of the Local Government:

Provided that the Local Government shall not give any such consent as aforesaid, until the licensee has given notice, by advertisement or otherwise as the Local Government may direct, and within such period as the Local Government may fix in this behalf, to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the Local Government.

Notice of new works.

13. (1) Where the exercise of any of the powers of a licensee in relation to the execution of any works involves the placing of any works in, under, over, along or across any street, part of a street, railway, tramway, canal or waterway, the following provisions shall have effect, namely:—

(a) not less than one month before commencing the execution of the works (not being a service line immediately attached, or intended to be immediately attached, to a distributing main, or the repair, renewal or amendment of existing works of which the character or position is not to be altered), the licensee shall serve upon the person responsible for the repair of the street or part of a street (hereinafter in this section referred to as "the repairing authority") or upon the person for the time being entitled to work the railway, tramway, canal or waterway (hereinafter in this section referred to as "the owner"), as the case may be, a notice in writing describing the proposed works, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally, and intimating the manner in which, and the time at which, it is proposed to interfere with or alter any existing works, and shall, upon being required to do so by the repairing authority or owner, as the case may be, from time to time give such further information in relation thereto as may be desired;

(b) if the repairing authority intimates to the licensee that it disapproves of such works, section or plan, or approves thereof subject to amendment, the licensee may, within one week of receiving such intimation, appeal to the Local Government, whose decision shall, after considering the reasons given by the repairing authority for its action, be final;

(c) if the repairing authority fails to give notice in writing of its approval or disapproval to the licensee within one month, it shall be deemed to have approved of the

works, section and plan, and the licensee, after giving not less than forty-eight hours' notice in writing to the repairing authority, may proceed to carry out the works in accordance with the notice and the section and plan served under clause (*a*);

(*d*) if the owner disapproves of such works, section or plan, or approves thereof subject to amendment, he may, within three weeks after the service of the notice under clause (*a*), serve a requisition upon the licensee demanding that any question in relation to the works or to compensation, or to the obligations of the owner to others in respect thereof, shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration;

(*e*) where no requisition has been served by the owner upon the licensee under clause (*d*) within the time named, the owner shall be deemed to have approved of the works, section and plan, and in that case, or where after a requisition for arbitration the matter has been determined by arbitration, the works may, upon payment or securing of compensation, be executed according to the notice and the section and plan, subject to such modifications as may have been determined by arbitration or agreed upon between the parties;

(*f*) where the works to be executed consist of the laying of any underground service line immediately attached, or intended to be immediately attached, to a distributing main, the licensee shall give to the repairing authority or the owner, as the case may be, not less than forty-eight hours' notice in writing of his intention to execute such works;

(*g*) where the works to be executed consist of the repair, renewal or amendment of existing works of which the character or position is not to be altered, the licensee shall, except in cases of emergency, give to the repairing authority, or to the owner, as the case

may be, not less than forty-eight hours' notice in writing of his intention to execute such works, and, on the expiry of such notice, such works shall be commenced forthwith and shall be carried on with all reasonable despatch, and, if possible, both by day and by night until completed.

(*2*) Where the licensee makes default in complying with any of these provisions, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

(3) Notwithstanding anything in this section; the licensee may, in case of emergency due to the break-down of an underground electric supply-line after giving notice in writing to the repairing authority or the owner, as the case may be, of his intention to do so, place an aerial line without complying with the provisions of sub-section (*1*);

Provided that such aerial line shall be used only until the defect in the underground electric supply-line can be made good, and in no case (unless with the written consent of the Local Government) for a period exceeding six weeks, and shall be removed as soon as may be after such defect is removed.

Alteration of pipes or wires.

14. (*1*) Any licensee may alter the position of any pipe (not forming, in a case where the licensee is not a local authority, part of a local authority's main sewer), or of any wire under or over any place which he is authorized to open or break up, if such pipe or wire is likely to interfere with the exercise of his powers under this Act; and any person may alter the position of any electric supply-lines or works of the licensee under or over any such place as aforesaid, if such electric supply-lines or works are likely to interfere with the lawful exercise of any powers vested in him.

(*2*) In any such case as aforesaid the following provisions shall, in the absence of an agreement to the contrary between the parties concerned, apply, namely:—

(*a*) not less than one month before commencing any alteration, the licensee or other person desiring to make the same (hereinafter in this section referred to as

"the operator") shall serve upon the person for the time being entitled to the pipe, wire, electric supply-lines or works, as the case may be (hereinafter in this section referred to as "the owner"), a notice in writing, describing the proposed alteration, together with a section and plan thereof on a scale sufficiently large to show clearly the details of the proposed works, and not in any case smaller than one inch to eight feet vertically and sixteen inches to the mile horizontally and intimating the time when it is to be commenced, and shall subsequently give such further information in relation thereto as the owner may desire;

(*b*) within fourteen days after the service of the notice, section and plan upon the owner, the owner may serve upon the operator a requisition to the effect that any question arising upon the notice, section or plan shall be determined by arbitration, and thereupon the matter shall, unless settled by agreement, be determined by arbitration;

(*c*) every arbitrator to whom a reference is made under clause (*b*) shall have regard to any duties or obligations which the owner is under, and may require the operator to execute any temporary or other works so as to avoid as far as possible interference therewith;

(*d*) where no requisition is served upon the operator under clause (*b*) within the time named, or where such a requisition has been served and the matter has been settled by agreement or determined by arbitration, the alteration may, upon payment or securing of any compensation accepted or determined by arbitration, be executed in accordance with the notice, section and plan and subject to such modifications as may have been determined by arbitration or agreed upon between the parties;

(*e*) the owner may, at any time before the operator is entitled to commence the alteration, serve upon the operator a statement in writing to the effect that he

desires to execute the alteration himself and requires the operator to give such security for the repayment of any expenses as may be agreed upon or, in default of agreement, determined by arbitration;

(*f*) where a statement is served upon the operator under clause *(e)*, he shall, not less than forty-eight hours before the execution of the alteration is required to be commenced, furnish such security and serve upon the owner a notice in writing intimating the time alteration is required to be commenced, and the manner in which it is required to be made: and thereupon the owner may proceed to execute the alteration as required by the operator;

(*g*) where the owner declines to comply, or does not, within the time and in the manner prescribed by a notice served upon him under clause *(f)*, comply with the notice, the operator may himself execute the alteration;

(*h*) all expenses properly incurred by the owner in complying with a notice served upon him by the operator under clause (*f*) may be recovered by him from the operator.

(*3*) Where the licensee or other person desiring to make the alteration makes default in complying with any of these provisions he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Laying of electric supply-lines or other works near sewers, pipes or other electric supply-lines or works.

15. (*1*) Where—

(*a*) the licensee requires to dig or sink any trench for laying down any new electric supply-lines or other works, near to which any sewer, drain, water-course or work under the control of the Local Government or of any local authority, or any pipe, syphon, electric supply-line or other work belonging to any duly authorized person, has been lawfully placed, or

(*b*) any duly authorized person requires to dig or sink any trench for laying down or constructing any new pipes or other works, near to which any electric supply-lines or works of a licensee have been lawfully placed,

the licensee or such duly authorized person, as the case may be (hereinafter in this section referred to as "the operator"), shall, unless it is otherwise agreed upon between the parties interested or in case of sudden emergency, give to the Local Government or local authority, or to such duly authorized person or to the licensee, as the case may be (hereinafter in this section referred to as "the owner"), not less than forty-eight hours' notice in writing before commencing to dig or sink the trench, and the owner shall have the right to be present during the execution of the work, which shall be executed to the reasonable satisfaction of the owner.

(*2*) Where the operator finds it necessary to undermine, but not to alter, the position of any pipe, electric supply-line or work, he shall support it in position during the execution of the work, and before completion shall provide a suitable and proper foundation for it where so undermined.

(*3*) Where the operator (being the licensee) lays any electric supply-line across, or so as to be liable to touch, any pipes, lines or service-pipes or service-lines belonging to any duly authorized person or to any person supplying, transmitting or using energy under this Act, he shall not, except with the written consent of such person and in accordance with section 34, sub-section *(1)*, lay his electric supply-lines so as to come into contact with any such pipes, lines or service pipes or service lines.

(*4*) Where the operator makes default in complying with any of the provisions of this section, he shall make full compensation for any loss or damage incurred by reason thereof.

(*5*) Where any difference or dispute arises, under this section, the matter shall be determined by arbitration.

(*6*) Where the licensee is a local authority, the reference in this section to the local authority and to sewers, drains. waetr-courses or works under its control shall not apply,

Streets, railways, tramways, sewers, drains or tunnels broken up to be reinstated without delay.

16. (*1*) Where any person, in exercise of any of the powers conferred by or breaks up the the soil or pavement of any street, railway or tramway, or any sewer, drain or tunnel, he shall—

(*a*) immediately cause the part opened or broken up to be fenced and guarded;

(*b*) before sunset cause a light or lights, sufficient for the warning of passengers, to be set up and maintained until sunrise against or near the part opened or broken up;

(*c*) with all reasonable speed fill in the ground and reinstate and make good the soil or pavement, or the sewer, drain or tunnel, opened or broken up, and carry away the rubbish occasioned by such opening or breaking up; and,

(*d*) after reinstating and making good the soil or pavement, or the sewer, drain or tunnel, broken or opened up, keep the same in good repair for three months and for any further period, not exceeding nine months, during which subsidence continues.

(*2*) Where any person fails to comply with any of the provisions of sub-section (*1*), the person having the control or management of the street, railway, tramway, sewer, drain or tunnel in respect of which the default has occurred, may cause to be executed the work which the defaulter has delayed or omitted to execute, and may recover from him the expenses incurred in such execution.

(*3*) Where any difference or dispute arises as to the amount of the expenses incurred under sub-section (*2*), the matter shall be determined by arbitration.

Notice to telegraph-authority.

17. (*1*) A licensee shall, before laying down or placing, within ten yards of any part of any telegraph-line, any electric supply line or other works (not being service-lines immediately attached or intended to be immediately attached to a distributing main, or electric supply-lines for the repair, renewal or amendment of existing works of which the character or position is not to be altered), give not less than ten days' notice in writing to the telegraph-authority, specifying—

(*a*) the course of the works or alterations proposed,

(*b*) the manner in which the works are to be utilized,

(*c*) the amount and nature of the energy to be transmitted, and

(d) the extent to, and manner in, which (if at all) earth returns are to be used;

and the licensee shall conform with such reasonable requirements, either general or special, as may be laid down by the telegraph-authority within that period for preventing any telegraph-line from being injuriously affected by such works or alterations:

Provided that, in case of emergency (which shall be stated by the licensee in writing to the telegraph-authority) arising from defects in any of the electric supply-lines or other works of the licensee the licensee shall be required to give only such notice as may be possible after the necessity for the proposed new works or alterations has arisen.

(2) Where the works to be executed consist of the laying of any underground service-line immediately attached, or intended to be immediately attached, to a distributing main the license shall, not less than farty-eight hours before commencing the work, serve upon the telegraph-authority a notice in writing of his intention to execute such works.

Aerial lines.

18. (1) Save as provided in section 13, sub-section (3), nothing in this part shall be deemed to authorize or empower a licensee to place any aerial line along or across any street, railway, tramway, canal or waterway unless and until the Local Government has communicated to him a general approval in writing of the methods of construction which he proposes to adopt:

Provided that the communication of such approval shall in no way relieve the licensee of his obligations with respect to any other consent required by or under this Act.

(2) Where any aerial line has been placed or maintained by a licensee in breach of the provisions of sub-section (1), the Local Government may require the licensee forthwith to remove the same, or may cause the same to be removed and recover from the licensee the expenses incurred in such removal.

(3) Where any tree standing or lying near an aerial line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of energy, a Magistrate of the first class or, in a Presidency town or Rangoon, the Commissioner of Police may, on the application of the licensee cause the tree to be removed or otherwise dealt with as he thinks fit,

(*4*) When disposing of an application under sub-section (*3*), the Magistrate or Commissioner of Police, as the case may be, shall, in the case of any tree in existence before the placing of the aërial line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Compensation for damage.

19. (*1*) A licensee shall, in exercise of any of the powers conferred by or under this Act, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(*2*) Save in the case provided for in section 12, sub-section (*3*), where any difference or dispute arises as to the amount or the application of such compensation, the matter shall be determined by arbitration.

Supply.

Power for licensee to enter premises and to remove fittings or other apparatus of licensee.

20. (*1*) A licensee or any person duly authorized by a licensee may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which energy is or has been supplied by him, for the purpose of—

(*a*) inspecting and testing the electric supply-lines, meters, fittings, works and apparatus for the supply of energy belonging to the licensee; or

(*b*) ascertaining the amount of energy supplied or the electrical quantity contained in the supply; or

(*c*) removing, where a supply of energy is no longer required, or where the licensee is authorized to take away and cut off such supply, any electric supply-lines, fittings, works or apparatus belonging to the licensee.

(*2*) A licensee or any person authorized as aforesaid may also, in pursuance of a special order in this behalf made by the District Magistrate or, in a Presidency-town or Rangoon, by the Commissioner of Police, and after giving not less than twenty-four hours' notice in writing to the occupier, enter any premises to which energy is or has been supplied, or is to be supplied, by him, for the purpose of examining and testing the electric wires, fittings,

works and apparatus for the use of energy belonging to the consumer.

Restrictions on licensee's controlling or interfering with use of energy.

21. (*1*) A licensee shall not be entitled to prescribe any special form of appliance for utilizing energy supplied by him, or, save as provided by section 23, sub-section (*2*), or by section 26, sub-section (*7*), in any way to control or interfere with the use of such energy :

Provided that no person may adopt any form of appliance, or use the energy supplied to him, so as unduly or improperly to interfere with the supply by the licensee of energy to any other person.

(*2*) Where any difference or dispute arises as to whether a licensee has prescribed any appliance or controlled or interfered with the use of energy in contravention of sub-section (*1*), the matter shall be either referred to an Electric Inspector and decided by him or, if the licensee or consumer so desires, determined by arbitration.

Obligation on licensee to supply energy.

22. Where energy is supplied by a licensee, every person with the area of supply shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled, on application, to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of energy for any premises having a separate supply unless he has agreed with the licensee to pay to him such minimum annual sum as will give him a reasonable return on the capital exependiture, and will cover other standing charges incurred by him in order to meet the possible maximum demand for those premises, the sum payable to be determined in case of difference or dispute by arbitration.

Charges for energy to be made without undue preference.

23. (*1*) A licensee shall not, in making any agreement for the supply of energy, show undue preference to any person, but may, save as aforesaid, make such charges for the supply of energy as may be agreed upon not exceeding the limits imposed by his license.

(*2*) No consumer shall, except with the consent in writing of the licensee, use energy supplied to him under one method of charging in a manner for which a higher method of charging is in force.

24. Where any person neglects to pay any charge for energy or any other sum due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and re-connecting the supply, are paid, but no longer:

Discontinuance of supply to consumer neglecting to pay charge.

Provided that where any difference or dispute has been referred under this Act to an Electric Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision.

25. Where any electric supply-lines, meters, fittings, works or apparatus belonging to licensee are placed in or upon any premises, not being in the possession of the licensee, for the purpose of supplying energy, such electric supply-lines, meters, fittings, works and apparatus shall not be liable to be taken in execution under any process of any Civil Court or in any proceedings in insolvency against the person in whose possession the same may be.

Exemption of electric supply-lines or other apparatus from attachment in certain cases.

26. (*1*) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied with such a meter:

Meters.

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof, unless the consumer elects to purchase a meter.

(*2*) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct, and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorized by the licensee shall, at any reasonable time and on informing the consumer of his intention, have access to, and be at liberty to inspect and test, and for that purpose if he thinks fit, take off and remove, any meter referred to in sub-section (1); and, except where the meter is so hired as aforesaid, all reasonable expenses of and incidental to, such inspecting, testing, taking off and removing shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and where any difference or dispute arises as to the amount of such reasonable expenses, the matter shall be referred to an Electric Inspector, and the decision of such Inspector shall be final:

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a licensee, or disconnect the same from any such electric supply-line, without giving to the licensee not less than forty-eight hours' notice in writing of his intention.

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided, upon the application of either party, by an Electric Inspector, or by a competent person specially appointed by the Local Government in this behalf; and, where the meter has, in the opinion of such Inspector or person, ceased to be correct, such Inspector or person shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time as the meter shall not, in the opinion of such Inspector or person, have been correct, on the basis of the previous supply; and where the matter has been decided by any person other than the Electric Inspector, an appeal shall lie to the Inspector, whose decision shall in every case be final but, save as aforesaid, the rigister of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity.

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply:

Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1):

Provided, also, that, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation.—A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error, and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus.

Supply of energy outside area of supply.

27. Notwithstanding anything in this Act, the Local Government may, by order in writing, and subject to such conditions and restrictions, if any, as it thinks fit to impose, authorise any licensee to supply energy to any person outside the area of supply, and to lay down or place electric supply-lines for that purpose;

Provided, first, that no such authority shall be conferred on the licensee within the area of supply of another licensee without that licensee's consent, unless the Local Government considers that his consent has been unreasonably withheld:

Provided, secondly, that such authority shall not be conferred unless the person to whom the supply is to be given has entered into a specific agreement with the licensee for the taking of such supply :

Provided, thirdly, that a licensee on whom such authority has been conferred shall not be deemed to be empowered outside the area of supply to open or break up any street, or any sewer, drain or tunnel in or under any street, railway or tramway, or to interfere with any telegraph-line, without the written consent of the local authority or person by whom such street, sewer, drain or tunnel is repairable, or of the telegraph-authority, as the case may be :

Provided, fourthly, that, save as aforesaid the provisions of this Act, shall apply in the case of any supply authorised under this section as if the said supply were made within the area of supply.

PART III.

Supply, Transmission and Use of Energy by Non-Licensees.

Sanction required by non-licensees in certain cases.

28. (*1*) No person, other than a licensee, shall engage in the business of supplying energy except with the previous sanction of the Local Government and in accordance with such conditions as the Local Government may fix in this behalf, and any agreement to the contrary shall be void :

Provided that such sanction shall not be given in any case unless the Local Government considers that, having regard to the extent of the proposed supply and the other circumstances of the case, the obtaining of a license under Part II would be attended with undue expense or delay :

Provided also that such sanction shall not be given within the area for which a local authority is constituted, without that local authority's consent, or within the area of supply of any licensee, without that licensee's consent, unless the Local Government considers that consent has been unreasonably withheld.

(*2*) Where any difference or dispute arises as to whether any person is or is not engaging, or about to engage, in the business of supplying energy within the meaning of sub-section (*1*), the matter shall be referred to the Local Government, and the decision of the Local Government thereon shall be final.

29. (*1*) The local authority may, by order in writing, confer and impose upon any person, who has obtained the sanction of the Local Government under section 28 to engage, in the business of supplying energy, all or any of the powers and liabilities of a licensee under sections 12 to 19, both inclusive, and the provisions of the said sections shall thereupon apply as if such person were a licensee under Part II.

Power for non-licensees to break up streets.

(*2*) A local authority, not being a licensee, shall, for the purpose of lighting any street, have the powers and be subject to the liabilities respectively conferred and imposed by sections 12 to 19, both inclusive, so far as applicable, as if it were a licensee under Part II.

(*3*) In cases other than those for which provision is made by sub-section (*1*), the person responsible for the repair of any street may, by order in writing, confer and impose upon any person who proposes to transmit energy in such street all or any of the powers and liabilities of a licensee under sections 12 to 19 (both inclusive), in so far as the same relate to—

(*a*) opening or breaking up of the soil or pavement of such street, or

(*b*) laying down or placing electric supply-lines in, under, along or across such street, or

(*c*) repairing, altering or removing such electric supply-lines,

and thereupon the provisions of the said sections shall, so far as aforesaid, apply to such person as if he were a licensee under Part II.

(*4*) If no order is made within fourteen days after the receipt of an application for the same under sub-section (*1*) or sub-section (3), the order so applied for shall be deemed to have been refused, and every order, and every refusal to make an order, under sub-section (*1*) or sub-section (3), shall be subject to revision by the Local Government.

30. (*1*) No person, other than a licensee duly authorized under the terms of his license, shall transmit or use energy at a rate exceeding two hundred and fifty watts,—

Control of transmission and use of energy.

(*a*) in any street, or

(*b*) in any place,

(i) in which one hundred or more persons are likely ordinarily to be assembled, or

(ii) which is a factory within the meaning of the Indian Factories Act, 1881, or

(iii) which is a mine within the meaning of the Indian Mines Act, 1901,

without giving not less than seven clear days' notice in writing of his intention to the District Magistrate or, in a Presidency-town or Rangoon, to the Commissioner of Police, and complying with such of the provisions of Part IV, and of the rules made thereunder, as may be applicable :

Provided that nothing in this section shall apply to energy used for the public carriage of passengers, animals or goods on, or for the lighting or ventilation of the rolling-stock of, any railway or tramway subject to the provisions of the Indian Railways Act, 1890 :

Provided, also, that the Local Government may, by general or special order and subject to such conditions and restrictions as may be specified therein, exempt from the application of this section or of any such provision or rule as aforesaid any person or class of persons using energy on premises upon or in connection with which it is generated, or using energy supplied under Part II in any place specified in clause (*b*).

(2) Where any difference or dispute arises as to whether a place is, or is not one in which one hundred or more persons are likely ordinarily to be assembled, the matter shall be referred to the Local Government, and the decision of the Local Government thereon shall be final.

(3) The provisions of this section shall be binding on the Crown.

PART IV.

General.

Protective Clauses.

Protection of railways and canals, docks, wharves and piers.

31. No person shall, in the generation, transmission, supply or use of energy, in any way injure any railway, tramway, canal or water-way or any dock, wharf or pier vested in or controlled by a local authority, or obstruct or interfere with the traffic on any railway, tramway, canal or water-way.

32. (1) Every person generating, transmitting, supplying or using energy (hereinafter in this section referred to as the "operator") shall take all reasonable precautions in constructing, laying down and placing his electric supply-lines and other works and in working his system, so as not injuriously to affect, whether by induction or otherwise, the working of any wire or line used for the purpose of telegraphic, telephonic or electric-signalling communication, or the currents in such wire or line.

Protection of telegraphic, telephonic and electric-signalling lines.

(2) Where any difference or dispute arises between the operator and the telegraph-authority as to whether the operator has constructed, laid down or placed his electric supply-lines or other works, or worked his system, in contravention of sub-section (1), or as to whether the working of any wire, line or current is or is not injuriously affected thereby, the matter shall be referred to the Governor-General in Council; and the Governor-General in Council, unless he is of opinion that the wire or line has been placed in unreasonable proximity to the electric supply-lines or works of the operator after the construction of such lines or works, may direct the operator to make such alterations in, or additions to, his system as may be necessary in order to comply with the provisions of this section, and the operator shall make such alterations or additions accordingly.

Provided that nothing in this sub-section shall apply to the repair, renewal or amendment of any electric supply-line so long as the course of the electric supply-line and the amount and nature of the energy transmitted thereby are not altered.

(3) Where the operator makes default in complying with the requirements of this section, he shall make full compensation for any loss or damage incurred by reason thereof, and, where any difference or dispute arises as to the amount of such compensation, the matter shall be determined by arbitration.

Explanation.—For the purposes of this section, a telegraph-line shall be deemed to be injuriously affected if telegraphic, telephonic or electric signalling communication by means of such line is, whether through induction or otherwise, prejudically interfered with by an electric supply-line or work or by any use made thereof.

33. (1) Every person shall, within twenty-four hours of the occurrence, send to the Electric Inspector, and also to the district Magistrate or, in a Presidency-town or Rangoon, to the Commissioner of police, notice in writing of any accident in connection with the generation, transmission, supply or use of energy resulting or likely to have resulted in loss of life or personal injury in any part of such person's works or electric supply-lines, or in connection with the same, and also notice of any loss of life or personal injury actually occasioned by any such accident.

Notice of accidents and inquiries.

(2) The Local Government may, if it thinks fit, require any Electric Inspector, or any other competent person appointed by it in this behalf, to inquire and report—

(a) as to the cause of any accident affecting the safety of the public, which may have been occasioned by or in connection with the generation, transmission, supply or use of energy, or

(b) as to the manner in, and extent to, which the provisions of this Act or of any license or rules thereunder, so far as those provisions affect the safety of any person, have been complied with.

34. (1) No person shall, in the generation, transmission supply or use of energy permit any part of his electric supply lines to be connected with earth except so far as may be prescribed in this behalf or may be specially sanctioned by the Governor-General in Council.

Prohibition of connection with earth and power for Government to interfere in certain cases of default.

(2) If at any time it is established to the satisfaction of the Local Government—

(a) that any part of an electric supply-line is connected with earth contrary to the provisions of sub-section (1), or

(b) that any electric supply-lines or other works for the generation, transmission, supply or use of energy are attended with danger to the public safety or to human life or injuriously affect any telegraph-line, or

(*c*) that any electric supply-lines or other works are defective so as not to be in accordance with the provisions of this Act or of any rule thereunder,

the Local Government may, by order in writing, specify the matter complained of and require the owner or user of such electric supply-lines or other works to remedy it in such manner as shall be specified in the order, and may also in like manner forbid the use of any electric supply-line or works until the order is complied with or for such time as is specified in the order.

Administration and Rules.

Advisory Boards.

35. (*1*) The Governor-General in Council may, for the whole or any part of British India, and each Local Government may, for the whole or any part of the province, by notification in the *Gazette of India* or in the local official Gazette, as the case may be, constitute an Advisory Board.

(*2*) Every such Board shall consist of a chairman and not less than two other members.

(*3*) The chairman and, where there are more than two other members, two of the other members, or, where there are only two other members, one of the other members, shall be nominated by the Governor General in Council or the Local Government, as the case may be, and the remaining members shall be nominated by such local authorities, Chambers of Commerce or other Associations as the Governor-General in Council or the Local Government, as the case may be, may direct.

(*4*) The Governor-General in Council or the Local Government, as the case may be, may, by general or special order,—

(*a*) define the duties and regulate the procedure of any such Board,

(*b*) determine the tenure of office of the members of any such Board, and

(*c*) give directions as to the payment of fees to, and the travelling expenses incurred by, any member of any such Board in the performance of his duty.

Appointment of Electric Inspectors.

36. (1) The Governor-General in Council may, by notification in the *Gazette of India*, appoint duly qualified persons to be Electric Inspectors, and every Electric Inspector so appointed

shall exercise the powers and perform the functions of an Electric Inspector under this Act within such areas and subject to such restrictions as the Governor-General in Council may direct.

(2) The Local Government may, by notification in the local official Gazette, appoint duly qualified persons to be Electric Inspectors within such areas as may be assigned to them respectively; and every Inspector so appointed shall exercise the powers and perform the functions of an Electric Inspector under this Act subject to such restrictions as the Local Government may direct.

(3) In the absence of express provision to the contrary in this Act or any rule thereunder, an appeal shall lie from the decision of an Electric Inspector to the Governor-General in Council or the Local Government, as the case may be.

Power for Government to make rules.

37. (1) The Governor-General in Council may make rules for the whole or any part of British India, to regulate the generation, transmission, supply and use of energy, and, generally, to carry out the purposes and objects of this Act.

(2) In particular and without prejudice to the generality, of the foregoing power, such rules may—

(*a*) prescribe the form of applications for licenses and the payments to be made in respect thereof;

(*b*) regulate the publication of notices;

(*c*) prescribe the manner in which objections with reference to applications under Part II are to be made;

(*d*) provide for the preparation and submission of accounts by licensees in a specified form;

(*e*) provide for the securing of a regular, constant and sufficient supply of energy by licensees to consumers and for the testing at various parts of the system of the regularity and sufficiency of such supply, and for the examination of the record of such tests by consumers;

(*f*) provide for the protection of persons and property from injury by reason of contact with, or the proximity of, or by reason of the defective or dangerous condition of, any appliance or apparatus used in the generation, transmission, supply or use of energy;

(*g*) for the purposes of electric traction regulate the employment of insulated returns, or of uninsulated metallic returns of low resistance, in order to prevent fusion or injurious electrolytic action of or on metallic pipes, structures or substances, and to minimise, as far as is reasonably practicable, injurious interference with the electric wires, supply-lines and apparatus of parties other than the owners of the electric traction system, or with the currents therein, whether the earth is used as a return or not;

(*h*) provide for preventing telegraph-lines and magnetic observatories or laboratories from being injuriously affected by the generation, transmission, supply or use of energy;

(*i*) prescribe the qualifications to be required of Electric Inspectors;

(*j*) authroize any Electric Inspector or other officer of a specified rank and class to enter, inspect and examine any place, carriage or vessel in which he has reason to believe any appliance or apparatus used in the generation, transmission, supply or use of energy to be, and to carry out tests therein, and to prescribe the facilities to be given to such Inspectors or officers for the purpose of such examinations and tests;

(*k*) authorize and regulate the levy of fees for any such testing or inspection and generally, for the services of Electric Inspectors under this Act.

(*3*) In making any rule under this Act, the Governor-General in Council may direct that every breach thereof shall be punishable with fine which may extend to three hundred rupees, and, in the case of a continuing breach, with a further daily fine which may extend to fifty rupees.

Further provisions respecting rules.

38. (1) The power to make rules under section 37 shall be subject to the condition of the rules being made after previous publication.

(2) The date to be specified in accordance with clause (3) of section 23 of the General Clauses Act, 1897, as that after which a draft of rules proposed to be made under section 37 will be taken into consideration shall not be less than three months from the date on which the draft of the proposed rules was published for general information.

(3) Any rule to be made under this Act shall, before it is published for criticism under sub-section (2) be referred to the Advisory Board (if any) constituted for the whole of British India, or, if no such Board has been constituted, then to such Board or Boards (if any) as the Governor-General in Council may direct; and the rule shall not be so published until such Board or Boards (if any) has or have reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

(4) All rules made under section 37 shall be published in the *Gazette of India*, and on such publication shall have effect as if enacted in this Act.

Criminal Offences and Procedure.

Theft of energy.

39. Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the India Penal Code; and the existence of artificial means for such abstraction shall be *prima facie* evidence of such dishonest abstraction.

Penalty for maliciously wasting energy or injuring works.

40. Whoever maliciously causes energy to be wasted or diverted, or, with intent to cut off the supply of energy, cuts or injures, or attempts to cut or injure, any electric supply-line or works, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Penalty for unauthorized supply of energy by non-licensees.

41. Whoever, in contravention of the provisions of section 28, engages in the business of supplying energy shall be punishable with fine which may extend to three thousand rupees, and, in the case of a continuing contravention, with a daily fine which may extend to three hundred rupees.

Penalty for illegal or defective supply or for non-compliance with order.

42. Whoever—

(*a*) being a licensee, save as permitted under section 27 or section 51 or by his license, supplies energy or lays down or places any electric supply-line or works outside the area of supply; or,

(*b*) being a licensee, in contravention of the provisions of this Act or of the rules thereunder or in breach of the conditions of his license and without reasonable excuse, the burden of proving which shall lie on him, discontinues the supply of energy or fails to supply energy; or

(*c*) makes default in complying with any order issued to him under section 34, sub-section (2),

shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence or default, with a daily fine which may extend to one hundred rupees.

Penalty for illegal transmission or use of energy.

43. Whoever, in contravention of the provisions of section 30, transmits or uses energy without giving the notice required thereby, shall be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees.

Penalty for interference with meters or licensee's works and for improper use of energy.

44. Whoever—

(*a*) connects any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7), with any electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line, without giving to the licensee forty-eight hours notice in writing of his intention; or

(*b*) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee, without such licensee's consent; or

(*c*) maliciously injures any meter referred to in section 26, sub-section (1), or any meter, indicator or ap-

paratus referred to in section 26, sub-section (7), or wilfully or fraudulently alters the index of any such meter, indicator or apparatus, or prevents any such meter, indicator or apparatus from duly registering; or

(*d*) improperly uses the energy of a licensee;

shall be punishable with fine which may extend to three hundred rupees, and, in the case of a continuing offence, with a daily fine which may extend to thirty rupees; and the existence of artificial means for making such connection as is referred to in clause (*a*) or such communication as is referred to in clause (*b*) or for causing such alteration or prevention as is referred to in clause (*c*) or for facilitating such improper use as is referred to in clause (*d*) shall, where the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, be *prima facie* evidence that such conection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer.

Penalty for extinguishing public lamps.

45. Whoever maliciously extinguishes any public lamp shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to three hundred rupees, or with both.

Penalty for negligently wasting energy or injuring works.

46. Whoever negligently causes energy to be wasted or diverted, or negligently breaks, throws down or damages any electric supply-line, post, pole or lamp or other apparatus connected with the supply of energy, shall be punishable with fine which may extend to two hundred rupees.

Penalty for offences not otherwise provided for.

47. Whoever, in any case not already provided for by sections 39 to 46 (both inclusive), makes default in complying with any of the provisions of this Act, or with any order issued under it, or, in the case of a licensee, with any of the conditions of his license, shall be punishable with fine which may extend to one hundred rupees, and, in the case of a continuing default, with a daily fine which may extend to twenty rupees;

Provided that, where a person has made default in complying with any of the provisions of sections 13, 14, 15, 17 and 32, as the case may be, he shall not be so punishable if the Court is of opinion that the case was one of emergency and that the offender complied with the said provisions as far as was reasonable in the circumstances.

Penalties not to affect other liabilities.

48. The penalties imposed by sections 39 to 47 (both inclusive) shall be in addition to, and not in derogation of, any liability in respect of the payment of compensation or, in the case of a licensee, the revocation of his license, which the offender may have incurred.

Penalties where works belong to Government.

49. The provisions of sections 39, 40, 44, 45 and 46 shall, so far as they are applicable, be deemed to apply also when the acts made punishable thereunder are committed in the case of energy supplied by or of works belonging to the Government.

Institution of prosecutions.

50. No prosecution shall be instituted against any person for any offence against this Act or any rule, license or order thereunder, except at the instance of the Government or an Electric Inspector, or of a person aggrieved by the same.

Supplementary.

Exercise in certain cases of powers of telegraph-authority.

51. Notwithstanding anything in sections 12 to 16 (both inclusive) and sections 18 and 19, the Governor-General in Council may, by order in writing, for the placing appliances and apparatus for the transmission of energy, confer upon any public officer or licensee, subject to such conditions and restrictions (if any) as the Governor-General in Council may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that act, with respect to the placing of telegraph-lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

Arbitration.

52. Where any matter is, by or under this Act, directed to be determined by arbitration, the matter shall, unless it is otherwise expressly provided in the

license of a licensee, be determined by such person or persons as the Local Government may nominate in that behalf on the application of either party; but in all other respects the arbitration shall be subject to the provisions of the Indian Arbitration Act, 1899.

Service of notices, order or documents.

53. (*1*) Every notice, order or document by or under this Act required or authorized to be adressed any person may be served by post or left,—

(*a*) where the Government is the addressee, at the office of Secretary in the Public Works Department;

(*b*) where a local authority is the addressee, at the office of the local authority;

(*c*) where a company is the addressee, at the registered office of the Company or, in the event of the registered office of the Company not being in India, at the head office of the Company in India;

(*d*) where any other person is the addressee, at the usual or last known place of abode or business of the person.

(*2*) Every notice, order or document by or under this Act required or authorized to be addressed to the owner or occupier of any premises shall be deemed to be properly addressed if addressed by the description of the "owner" or "occupier" of the premises (naming the premises), and may be served by delivering it, or a true copy thereof, to some person on the premises, or, if there is no person on the premises to whom the same can with reasonable diligence be delivered, by affixing it on some conspicuous part of the premises.

Recovery of sums recoverable under certain provisions of Act.

54. Every sum declared to be recoverable by section 5, clause *(f)*, section 6, sub-section *(2)*, section 14, sub-section *(2)*, clause *(h)*, section 16, sub-section *(2)*, section 18, sub-section *(2)* or sub-section *(4)*, or section 26, sub-section *(4)*, and every fee leviable under this Act, may be recovered, on application to a Magistrate having jurisdiction where the person liable to pay the same is for the time being resident, by the distress and sale of any moveable property belonging to such person.

Delegation of certain functions of Local Government to Electric Inspectors.

55. (*1*) The Local Government may, by general or special order, authorize the discharge of any of its functions under section 13 or section 18, or clause (*b*), sub-clause (*2*), or clause XIII of the Schedule by an Electric Inspector.

Protection for acts done in good faith.

56. No suit, prosecution or other proceeding shall lie against any public officer, or any servant of a local authority, for anything done, or in good faith purporting to be done, under this Act.

Amendment of the Land Acquisition Act, 1894.

57. (*1*) In section 40, sub-section (1), clause (*b*), and section 41, sub-section (5), of the Land Acquisition Act, 1894, the term "work" shall be deemed to include electrical energy supplied, or to be supplied, by means of the work to be constructed.

(*2*) The Local Government may, if it thinks fit, on the application of any person, not being a company, desirous of obtaining any land for the purposes of his undertaking, direct that he may acquire such land under the provisions of the Land Acquisition Act, 1894, in the same manner and on the same conditions as it might be acquired if the person were a company.

Repeals and savings.

58. (*1*) The Indian Electricity Act, 1903, is hereby repealed:

Provided that every application for a license made and every license granted under the said Act shall be deemed to have been made and granted under this Act.

(*2*) Nothing in this Act shall be deemed to affect the terms of any license which was granted, or of any agreement which was made, by or with the sanction of the Government for the supply or use of electricity before the commencement of this Act.

THE SCHEDULE.

PROVISIONS TO BE DEEMED TO BE INCORPORATED WITH, AND TO FORM PART OF, EVERY LICENSE GRANTED UNDER PART II, SO FAR AS NOT ADDED TO, VARIED OR EXCEPTED BY THE LICENSE.

[*See section* 3, *sub-section* (2), *clause* (*f*)]

Security and Accounts.

Security for execution of works of licensee not being local authority.

1. Where the licensee is not a local authority, the following provisions as to giving security shall apply, namely :—

(*a*) The licensee shall, within the period fixed in that behalf by his license, or any longer period which the Local Government may substitute therefor by order under section 4, sub-section (3), clause (*b*), of the Indian Electricity Act, 1910, before exercising any of the powers by the license conferred on him in relation to the execution of works, show, to the satisfaction of the Local Government, that he is in a position fully and efficiently to discharge the duties and obligations imposed upon him by the license throughout the area of supply.

(*b*) The licensee shall also, within the period fixed in that behalf by his license, or any longer period which the Local Government may substitute therefor by order under section 4, sub-section (3), clause (*b*), of the Indian Electricity Act, 1910, and before exercising any of the powers conferred on him in relation to the execution of works, deposit or secure to the satisfaction of the Local Government such sum (if any) as may be fixed by the license or, if not so fixed, by the Local Government.

(*c*) The said sum deposited or secured by the licensee under the provisions of this clause shall be repaid or released to him on the completion of the works or at such earlier date or dates and by such instalments, as may be approved by the Local Government.

Audit of accounts of licensee not being local authority.

2. Where the licensee is not a local authority, the following provisions as to the audit of accounts shall apply, namely :—

(*a*) The annual statement of accounts of the undertaking shall, before being rendered under section 11 of the Indian Electricity Act, 1910, be examined and audited by such person as the Local Government

may appoint or approve in this behalf, and the remuneration of the auditor shall be such as the Local Government may direct, and his remuneration and all expenses incurred by him in or about the execution of his duties, to such an amount as the Local Government shall approve, shall be paid by the licensee on demand.

(*b*) The licensee shall afford to the auditor, his clerks and assistants, access to all such books and documents relating to the undertaking as are necessary for the purposes of the audit, and shall, when required, furnish to him and them all vouchers and information requisite for that purpose, and afford to him and them all facilities for the proper execution of his and their duty.

(*c*) The audit shall be made and conducted in such manner as the Local Government may direct.

(*d*) Any report made by the auditor, or such portion thereof as the Local Government may direct, shall be appended to the annual statement of accounts of the licensee, and shall thenceforth from part thereof.

(*e*) Notwithstanding the foregoing provisions of this clause, the Local Government may, if it thinks fit, accept the examination and audit of an auditor appointed by the licensee.

Separate accounts.

3. The licensee shall, unless the Local Government otherwise directs, at all times keep the accounts of the capital employed for the purposes of the undertaking distinct from the accounts kept by him of any other undertaking or business.

Compulsory Works and Supply.

Execution of work after commencement of license.

4. The licensee shall, within a period of three years after the commencement of the license, execute to the satisfaction of the Local Government all such works as may be specified in the license in this behalf or, if not so specified, as the local Government may, by order in writing issued within six months of the date of the commencement of the license, direct.

5. (1) Where, after the expiration of two years and six months from the commencement of the license, a requisition is made by six or more owners or occupiers of premises in or upon any street or part of a street within the area of supply or by the Local Government or a local authority charged with the public lighting thereof, requiring the licensee to provide distributing mains throughout such street or part thereof, the licensee shall comply within six months with the requisition, unless,--

Provisions as to laying down of further distributing mains.

(a) where it is made by such owners or occupiers as aforesaid, the owners or occupiers making it do not, within fourteen clear days after the service on them by the licensee of a notice in writing in this behalf, tender to the licensee a written contract duly executed and with sufficient security binding themselves to take, or guaranteeing that there shall be taken, a supply of energy for not less than two years to such amount as will in the aggregate produce annually, at the current rates charged by the licensee, a reasonable return to the licensee; or,

(b) where it is made by the Local Government or a local authority, the Local Government or local authority, as the case may be, does not, within the like period, tender a like contract binding itself to take a supply of energy for not less than seven years for the public lamps in such street or part thereof.

(2) Where any difference or dispute arises between the licensee and such owners or occupiers as to the sufficiency of the security offered under this clause, or as to the amount of energy to be taken or guaranteed as aforesaid, the matter shall be referred to the Local Government and either decided by it or, if it so directs, determined by arbitration.

(3) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(4) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

Requisition for supply to owners or occupiers in vicinity.

6. (*1*) Where a requisition is made by the owner or occupier of any premises situate within one hundred yards from any distributing main requiring the licensee to supply energy for such premises, the licensee shall, within one month from the making of the requisition, supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy in accordance with the requisition:

Provided, first, that the licensee shall not be bound to comply with any such requisition unless and until the person making it—

(*a*) within fourteen days after the service on him by the licensee of a notice in writing in this behalf, tenders to the licensee a written contract, in a form approved by the Local Government, duly executed and with sufficient security, binding himself to take a supply of energy for not less than two years to such amount as will produce, at current rates charged by the licensee, a reasonable return to the licensee, and,

(*b*) if required by the licensee so to do, pays to the licensee the cost of so much of any service line as may be laid down or placed for the purposes of the supply upon the property in respect of which the requisition is made, and of so much of any service-line as it may be necessary for the said purposes to lay down or place beyond one hundred feet from the licensee's distributing main, although not on that property:

Provided, secondly, that the licensee shall be entitled to discontinue such supply—

(*a*) if the owner or occupier of the property to which the supply is made has not already given security, or if any security given by him has become invalid or insufficient, and such owner or occupier fails to furnish security or to make up the original security to a sufficient amount, as the case may be, within

seven days after the service upon him of notice from the licensee requiring him so to do, or

(*b*) if the owner or occupier of the property to which the supply is made adopts any appliance, or uses the energy supplied to him by the licensee for any purposes, or deals with it in any manner, so as unduly or improperly to interfere with the efficient supply of energy to any other person by the licensee, or

(*c*) if the electric wires, fittings, works and apparatus in such property are not in good order and condition, and are consequently likely to affect injuriously the use of energy by the licensee, or by other persons, or

(*d*) if the owner or occupier makes any alterations of, or additions to, any electric wires, fittings, works or apparatus within such property as aforesaid, and does not notify the same to the licensee before the same are connected to the source of supply, with a view to their being examined and tested:

Provided, thirdly, that the maximum rate per unit of time at which the owner or occupier shall be entitled to be supplied with energy shall not exceed what is necessary for the maximum consumption on his premises, and, where the owner or occupier has required a license to supply him at a specified maximum rate, he shall not be entitled to alter that maximum, except after one month's notice in writing to the licensee, and the licensee may recover from the owner or occupier any expenses incurred by him by reason of such alteration in respect of the service-lines by which energy is supplied to the property beyond one hundred feet from the licensee's distributing main, or in respect of any fittings or apparatus of the licensee upon that property: and

Provided, fourthly, that, in the event of any requisition being made for a supply of energy from any distributing main of which the licensee can prove, to the satisfaction of an Electric Inspector,—

(*a*) that it is already loaded up to its full current-carrying capacity, or

(*b*) that, in case of a larger amount of current being transmitted by it, the loss of pressure will seriously

affect the efficiency of the supply to other consumers in the vicinity,

the licensee may refuse to accede to the requisition for such reasonable period, not exceeding six months, as such Inspector may think sufficient for the purpose of amending the distributing main or laying down or placing a further distributing main.

(2) Any service line laid for the purpose of supply in pursuance of a requisition under sub-clause (1) shall, notwithstanding that a portion of it may have been paid for by the person making the requisition, be maintained by the licensee.

(3) Where any difference or dispute arises as to the amount of energy to be taken or guaranteed as aforesaid, or as to the cost of any service-line or as to the sufficiency of the security offered by any owner or occupier, or as to the improper use of energy, or as to any alleged defect in any wires, fittings, works or apparatus, or as to the amount of the expenses incurred under the third proviso to sub-clause (1), the matter shall be referred to an Electric Inspector and decided by him.

(4) Every requisition under this clause shall be signed by the maker or makers thereof and shall be served on the licensee.

(5) Every requisition under this clause shall be in a form to be prescribed by rules under the Indian Electricity Act, 1910; and copies of the form shall be kept at the office of the licensee and supplied free of charge to any applicant.

Provisions as to laying electric supply-lines under special agreement.

7. (1) Where an application is made by any person for the supply of energy within the area of supply, for any premises not situate within one hundred yards from any distributing main, or in any street in which distributing mains have not already been laid down or placed, and where a special agreement has been entered into to give and receive such supply, the licensee shall, before commencing to lay down or place in any such street any electric supply-line serve upon the local authority (if any) and upon the owner or occupier of all premises abutting on so much of the street as lies between the points of origin and termination of the electric supply-line so to be laid

down or placed a notice stating that the licensee intends to lay down or place the electric supply-line, and intimating that, if within the said period the local authority or any two or more of such owners or occupiers require in accordance with the provisions of the license that a supply shall be given for any public lamps or to their premises, as the case may be, the necessary distributing main will be laid down or placed by the licensee at the same time as the electric supply-line intended for the particular person.

(*2*) Where any such special agreement as is referred to in sub-clause (*1*) has been entered into between the licensee and any person, the licensee shall supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply energy in such quantities as may have been agreed upon, and the provisions contained in the first, second, third and fourth provisos to sub-clause (*1*) and in sub-clauses (*2*) and (*3*) of clause VI shall, so far as may be, apply to every case in which energy is supplied under this clause as if such person had made a requisition under clause VI.

Supply for public lamps.

8. (1) Where a requisition is made by the Local Government or by a local authority requiring the licensee to supply for a period of not less than seven years energy for any public lamps within the distance of one hundred yards from any distributing main, the licensee shall supply, and, save in so far as he is prevented from doing so by cyclones, floods, storms or other occurrences beyond his control, continue to supply, energy for such lamps in such quantities as the Local Government or the local authority, as the case may be, may require.

(*2*) The provisions of sub-clause (*b*) of the first proviso of sub-clauses (*c*) and (*d*) of the second proviso, and of the third, and fourth provisos to sub-clause (*1*) and the provisions of sub-clauses (*2*) and (*3*) of clause VI shall, so far as may be, apply to every case in which a requisition for the supply of energy is made under this clause as if the Local Government or local authority were an owner or occupier within the meaning of those provisions.

Supply by bulk-licensees.

Special provisions applying to supply by bulk-licensees.

9. (1) Where, and in so far as, the licensee (hereinafter in this clause referred to as "the bulk-licensee") is authorized by his license to supply energy to other licensees for distribution by them (hereinafter in this clause referred to as "distributing licensees"), the following provisions shall apply, namely:—

(*a*) any distributing licensees within the bulk-licensee's area of supply may make a requisition on the bulk-licensee, requiring him to give a supply of energy and specifying the point, and the maximum rate per unit of time, at which such supply is required, and the date upon which the supply is to commence, such date being fixed after the date of receipt of the requisition so as to allow an interval that is reasonable with regard to the locality and to the length of the electric supply-line and the amount of the plant required;

(*b*) such distributing-licensee shall, if required by the bulk-licensee so to do, enter into a written agreement to receive and pay for a supply of energy for a period of not less than seven years of such an amount that the payment to be made for the same at the rate of charge for the time being charged for such supply shall not be less than such an amount as will produce a reasonable return to the bulk-licensee on the outlay (excluding expenditure on generating plant then existing and any electric supply-line then laid down or placed) incurred by him in making provision for such supply;

(*c*) the maximum rate per unit of time at which a distributing-licensee shall be entitled to be supplied with energy shall not exceed what is necessary for the purposes for which the supply is required by him, and need not be increased except upon a fresh requisition made in accordance with the foregoing provisions;

(*d*) if any difference or dispute arises under this clause, it shall be determined by arbitration, and, in the event of such arbitration, the arbitrator shall have regard to the following amongst other considerations, namely:—

(i) the period for which the distributing-licensee is prepared to bind himself to take energy;

(ii) the amount of energy required and the hours during which the bulk-licensee is to supply it;

(iii) the capital expenditure incurred or to be incurred by the bulk-licensee in connection with the aforesaid supply of energy; and

(iv) the extent to which the capital expended or to be expended by the bulk-licensee in connection with such supply may become unproductive upon the discontinuance thereof.

(*2*) Notwithstanding anything in sub-clause (), the bulk-licensee shall give a supply of energy to any distributing-licensee within his area of supply applying therefor, even although the distributing-licensee desires to be supplied with only a portion of the energy required for distribution by him:

Provided that the distributing-licensee shall, if so required by the bulk-licensee, enter into an agreement to take such energy upon special terms (including a minimum annual sum to be paid to the bulk-licensee) to be determined, if necessary, by arbitration in the manner laid down in sub-clause (1) (*d*).

(*3*) The maximum price fixed by a license for energy supplied to a distributing-licensee shall not apply to any partial supply given under sub-clause (*2*).

(*4*) Every distributing-licensee, who is supplied with energy by a bulk-licensee and intends to discontinue to receive such supply, shall give not less than twelve months' notice in writing of such intention to the bulk-licensee:

Provided that, where the distributing-licensee has entered into a written agreement with the bulk-licensee to receive and

pay for a supply of energy for a certain period, such notice shall be given so as not to expire before the end of that period.

Charges.

Methods of charging.

10. In the absence of an agreement to the contrary, the licensee may charge for energy supplied by him to any consumer—

(*a*) by the actual amount of energy so supplied ; or

(*b*) by the electrical quantity contained in the supply ; or

(*c*) by such other method as may be approved by the Local Government :

Provided, first, that, where the licensee charges by any method so approved by the Local Government, any consume who objects to that method may, by not less than one month's notice in writing, require the licensee to charge him, at the licensee's option, either by the actual amount of energy supplied to him or by the electrical quantity contained in the supply, and thereafter the licensee shall not, except with the consent of the consumer, charge him by any other method :

Provided, secondly, that, before commencing to supply energy through the distributing main, the licensee shall give notice, by public advertisement, of the method by which he proposes to charge for energy so supplied ; and, where the licensee has given such notice, he shall not be entitled to change that method of charging without giving not less than one month's notice in writing of such change to the Local Government, to the local authority (if any) concerned, and to every consumer of energy who is supplied by him from such distributing main :

Provided, thirdly, that, if the consumer is provided with a meter in pursuance of the provisions of section 26, sub-section *(I)*, of the Indian Electricity Act, 1910, and the licensee changes the method of charging for the energy supplied by him from the distributing main, the licensee shall bear the expense of providing a new meter, or such other apparatus as may be necessary by reason of the new method of charging.

Maximum charges.

11. Save as provided by clause IX, sub-clause *(3)*, the prices charged by the licensee for energy supplied by him shall not exceed the maxima fixed by his license, or, in the case of a method of charge approved

by the Local Covernment, such maxima as the Local Government shall fix on approving the method:

Provided that if, at any time after the expiration of seven years from commencement of the license, the Local Government considers or is satisfied that the maxima so fixed or approved as aforesaid should be altered, it may, after such inquiry (if any) as it thinks fit, make an order accordingly, which shall have effect from such date as may be mentioned therein:

Provided, also, that, where an order in pursuance of the foregoing proviso has been made, no further order altering the maxima fixed thereby shall be made until the expiration of another period of five years.

Charge for supply for public lamps.

12. The price to be charged by the licensee and to be paid to him for energy supplied for the public lamps, and the mode in which those charges are to be ascertained, shall be settled by agreement between the licensee and the Local Government or the local authority, as the case may be, and, where any difference or dispute arises, the matter shall be determined by arbitration.

Testing and Inspection.

Licensee to establish testing stations and keep instruments for testing.

13. The licensee shall establish at his own cost and keep in proper condition such number of testing stations, situated at such places within reasonable distance from any distributing main, as the Local Government may direct for the purpose of testing the pressure or periodicity of the supply of energy in the distributing main, and shall supply and keep in proper condition thereat, and on all premises from which he supplies energy, such instruments for testing as an Electric Inspector may approve, and shall supply energy to each testing station for the purpose of testing.

Facilities for testing.

14. The licensee shall afford all facilities for inspection and testing of his works and for the reading, testing and inspection of his instruments, and may, on each occasion of the testing of his works or the reading, testing or inspection of any instruments, be represented by an agent, who may be present, but shall not interfere with the reading, testing or inspection.

15. On the occasion of the testing of any works of the licensee by an Electric Inspector reasonable notice thereof shall be given to the licensee; and the testing shall be carried out at such suitable hours as, in the opinion of the Electric Inspector, will least interfere with the supply of energy by the licensee, and in such manner as the Electric Inspector may think fit; but, except under the provisions of an order made in each case in that behalf by the Local Government, the Electric Inspector shall not be entitled to have access to, or interfere with, the works of the licensee at any points other than those at which the licensee himself has access to the same:

Testing of works.

Provided that the licensee shall not be held responsible for any interruption or irregularity in the supply of energy which may be occasioned by, or required by the Electric Inspector for the purpose of, any such testing as aforesaid:

Provided, also, that the testing shall not be made in regard to any particular portion of the works oftener than once in any three months, unless in pursuance of an order made in each case in that behalf by the Local Government.

Plans.

16. *(1)* The licensee shall, after commencing supply of energy, forthwith cause a plan to be made of the area of supply, and shall cause to be marked thereon the alignment and the approximate height above or depth below the surface of all his then existing electric supply-lines, street-distributing boxes and other works, and shall once in every year cause that plan to be duly corrected so as to show the electric supply lines, street-distributing boxes and other works for the time being in position. The licensee shall also, if so required by an Electric Inspector, cause to be made sections showing the approximate level of all his existing under-ground works other than service-lines.

Plan of area of supply to be made and kept open for inspection.

(2) Every such plan shall be drawn to a scale which shall not be smaller than sixteen inches to the mile.

(3) Every such section shall be drawn to a horizontal scale which shall not be smaller than sixteen inches to the mile and to a vertical scale which shall not be smaller than one inch to eight feet.

(4) Every plan and section so made or corrected, or a copy thereof, marked with the date when it was so made or corrected shall be kept by the licensee at his principal office or place of business within the area of supply, and shall at all reasonable times be open to the inspection of all applicants, and copies thereof shall be supplied on such terms and conditions as may be prescribed by rules under the Indian Electricity Act, 1910.

(5) The licensee shall, if required by an Electric Inspector and where the licensee is not a local authority, by the local authority (if any) concerned, supply free of charge to such Electric Inspector or local authority, a copy of every such plan or section duly corrected so as to agree with the original kept at the principal office or place of business of the licensee.

Additional notice of certain works.

Notice to Electric Inspector.

17. On the day next preceding the commencement of any such works as are referred to in section 13 of the Indian Electricity Act, 1910, the licensee shall, in addition to any other notices which he may be required to give, serve upon the Electric Inspector, or such officer as the Local Government may appoint in this behalf for the area of supply, a notice in writing stating that he is about to commence the works, and the nature and position of the same.

THE INDIAN MUSEUM ACT, 1910.

Act No. X of 1910.

[Received the Assent of the Governor-General on the 18th. March 1910.]

An Act to consolidate and amend the law relating to the Indian Museum.

WHEREAS it is expedient to consolidate and amend the law relating to the Indian Museum; It is hereby enacted as follows:—

Preliminary.

Short title and commencement.

1. (1) This Act may be called the Indian Museum Act, 1910.

(2) It shall come into force on such date as the Governor-General in Council, by notification in the *Gazette of India*, may direct.

Incorporation of the Trustees.

Constitution and incorporation of the Trustees of the Indian Museum.

2. (1) The Trustees of the Indian Museum (hereinafter called the Trustees) shall be—

(*a*) the six persons for the time being performing the duties of the following offices, namely:—

(i) the Accountant General of Bengal;

(ii) the Principal, Government School of Arts, Calcutta;

(iii) the Director, Geological Survey of India;

(iv) the Superintendent of the Zoological and Anthropological Section of the Museum;

(v) the Director General of Archæology; and

(vi) the Officer in charge of the Industrial Section of the Museum;

(*b*) one other person to be nominated by the Governor-General in Council;

(*c*) three other persons to be nominated by the Lieutenant-Governor of Bengal;

(*d*) one other person to be nominated by the Council of the Asiatic Society of Bengal;

(*e*) one other person to be nominated by the Bengal Chamber of Commerce;

(*f*) one other person to be nominated by the British Indian Association, Calcutta:

(*g*) one other person to be nominated by the Syndicate of the Calcutta University; and

(*h*) three other persons to be nominated by the Trustees.

(2) The Trustees shall be a body corporate, by the name of "The Trustees of the Indian Museum," with perpetual succession and a common seal, and in that name shall sue and be sued, and shall have power to acquire and hold property, to enter into contracts, and to do all acts necessary for and consistent with the purposes of this Act.

(3) The nominated Trustees shall, save as herein otherwise provided, hold office for a period of three years:

Provided that the authority nominating a Trustee may extend his term of office for one or more like periods.

Minimum number of Trustees and quorum.

3. (1) The powers of the said body corporate may only be exercised so long and so often as there are nine members thereof.

(2) The quorum necessary for the transaction of business at a meeting of the Trustees shall not be less than six.

Power to appoint new Trustees.

4. If a nominated Trustee—

(a) dies, or

(b) is absent from the meetings of the Trustees for more than twelve consecutive months, or

(c) desires to be discharged, or

(d) refuses or becomes incapable to act, or

(e) is appointed to perform the duties of any office specified in section 2, clause (a),

the authority which nominated the Trustee may nominate a new Trustee in his place.

Vacation of office by existing Trustees.

5. From the commencement of this Act the term of office of all persons appointed to be Trustees under the Indian Museum Act, 1876, shall cease.

Property and powers of the Trustees.

Property vested in or placed under the control of the Trustees.

6. (1) All the property, whether moveable or immoveable, which at the commencement of this Act is held by the Trustees of the Indian Museum constituted by the Indian Museum Act, 1876, on trust for the purposes of the said Museum shall together with any such property which may hereinafter be given, bequeathed, transferred or acquired for the said purposes, vest in the Trustees of the Indian Museum constituted by this Act on trust for the purposes of the said Museum:

Provided that the Trustees may expend the capital of any portion of such property which may consist of money on the maintenance, improvement and enlargement of the collections

deposited in, presented to or purchased for the said Museum or otherwise for the purposes of the same as they may think fit.

(2) The Trustees shall have the exclusive possession, occupation and control, for the purposes of such trust, of the land specified in the schedule, including any buildings which may have been, or may hereafter be, erected thereon, other than those portions thereof which have been set apart by the Trustees for the records and offices of the Geological Survey of India.

Power to Trustees to exchange, sell and destroy articles in collections.

7. Subject to the provisions of any bye-laws made in this behalf, the Trustees may, from time to time,—

(a) deliver, by way of loan, to any person the whole or any portion of, or any article contained in, any collection vested in them under this Act;

(b) exchange or sell duplicates of articles contained in any such collection and take or purchase, in the place of such duplicates, such articles as may in their opinion be worthy of preservation in the Museum;

(c) present duplicates of articles contained in any such collection to other Museums in British India; and

(d) remove and destroy any article contained in any such collection.

Power to Trustees to make bye-laws.

8. (1) The Trustees may from time to time, with the previous sanction of the Governor General in Council, make bye-laws consistent with this Act for any purpose necessary for the execution of their trust.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the summoning, holding and adjournment of general and special meetings of the Trustees;

(b) the securing of the attendance of Trustees at such meetings;

(c) the provision and keeping of minute books and account-books;

(d) the compiling of catalogues;

(*e*) the lending of articles contained in the collections vested in the Trustees;

(*f*) the exchange and sale, and the presentation to other Museums in British India, of duplicates of articles contained in such collections;

(*g*) the removal and destruction of articles contained in such collections, and

(*h*) the general management of the Museum.

Power to Trustees to appoint officers and servants.

9. Subject to such regulations and conditions as may be prescribed by them in this behalf the Trustees shall appoint such officers and servants as may be necessary or proper for the careor management of the trust-property, and may assign to such officers and servants such pay as they may think fit:

Provided that—

(*a*) no officer shall be appointed—

(i) if such officer is, at the date of his appointment, in India, without the approval of the Governor-General in Council, or

(iii) if such officer is not then in India, without the approval of the Secretary of State for India in Council; and

(*b*) no new office shall be created, and no salaries of officers shall be altered, without the previous sanction of the Governor-General in Council.

Duties of the Trustees.

Trustees to furnish annual reports and accounts.

10. (1) The Trustees shall furnish on or before the first day of December in each year—

(*a*) to the Government of India a report of their several proceedings for the previous financial year, and

(*b*) to such auditor as the Governor-General in Council appoints in this behalf, accounts of all moneys expended by the Trustees during the previous financial year, supported by the necessary vouchers.

(2) The Trustees shall cause such report and accounts to be published annually for general information.

11. (1) The Trustees shall cause every article in the collections in the said Indian Museum formerly belonging to the Asiatic Society of Bengal and all additions that may hereafter be made thereto otherwise than by purchase under section 6 to be marked and numbered and (subject to the provisions contained in sections 7 and 16) to be kept and preserved in the said Museum with such marks and numbers.

Collections of Asiatic Society to be kept distinguished in the Museum.

(2) An inventory of such additions shall be made by the said Society, one copy whereof shall be signed by the Trustees and delivered to the said Society, and another copy shall be signed by the Council of the said Society and delivered to the Trustees, shall be kept by them along with the inventory delivered to the predecessors in office of the Trustees when the said collections were deposited in the said Museum.

12. All objects taken in exchange and articles purchased under section 7 and all moneys realised from sales made in accordance with the terms of the same section shall be held on trust and subject to powers and declarations corresponding as nearly as may be with the trusts, powers and declarations by this Act limited and declared.

Articles received in exchange or purchased and moneys paid on sale to be held on trust.

Supplemental Provisions.

13. All officers and servants appointed under this Act shall be deemed to be public servants within the meaning of the Indian Penal Code; and, so far as regards their salaries, allowances and pensions and their leave of absence from duty, they shall be subject to the rules which under the Civil Service Regulations for the time being in force would be applicable if their service was service under Government.

Officers under Act to be public servants and subject to Civil Service Regulations.

14. Notwithstanding anything hereinbefore contained, the Trustees may, if they think fit, with the previous sanction of the Governor-General in Council and subject in each case to such conditions as he may approve and to such rules as he may prescribe, assume the custody and administration of collections which are not the property of the Trustees for the purposes of their trust

Power to Trustees to keep collections not belonging to them.

under this Act and keep and preserve such collections either in the Indian Museum or elsewhere:

Provided that if the trust constituted by this Act is at any time determined, any such collections shall not by reason of their then being in the Indian Musuem become the property of His Majesty.

Power to Trustees to part with certain property in their possession.

15. The Trustees may, with the previous sanction of the Governor-General in Council, and subject to such conditions as he may approve, deliver possession of the whole or any part of the property described in the schedule to such person as the Lieutenant-Governor of Bengal may appoint in that behalf.

Property in collections on determination of trust.

16. If the trust constituted by this Act is at any time determined,—

(*a*) the collections and additions mentioned in section 11 shall become the property of the said Asiatic Society or their assigns, and

(*b*) all the other collections then in the said Indian Museum shall, save as otherwise provided by section 14, become the property of His Majesty.

Repeals.

17. The Indian Museum Act, 1876, and the Indian Museum Act, 1887, are hereby repealed.

THE SCHEDULE.

(*See sections* 6 *and* 15.)

Land bounded—

on the north side by the premises No. 2, Sudder Street, and by Sudder Street;

on the wset side by Chowringhee Road and by the premises No. 29, Chowringhee Road (occupied by the Bengal United Service Club);

on the south side by the premises No. 26, Chowringhee Road, by Kyd Street, and by the premises No. 4, Chowringhee Lane, and

on the east side by the premises No. 15, Kyd Street, and the premises Nos. 4, 3, 2 and 1, Chowringhee Lane,

together with all buildings, roads, and tanks existing or erected thereon, and all easements appertaining thereto.

CENTL. PROV. AMENDMENT ACT.

Act No XI of 1910.

An Act to amend the Central Provinces Courts Act, 1904.

[Received the assent of the Governor-General on the 18th March, 1910.]

Whereas it is expedient to amend the Central Provinces Courts Act, 1904; It is hereby enacted as follows:—

Short title.

1. This Act may be called the Central Provinces Courts (Amendment) Act, 1910.

Substitution of new Chapter for Chapter II, of Act II, 1904.

2. For Chapter II of the Central Provinces Courts Act, 1904, the following shall be substituted, namely:—

"CHAPTER II.

"THE COURT OF THE JUDICIAL COMMISSIONER.

Jurisdiction of Court of Judicial Commissioner.

"3. The Court of the Judicial Commissioner of the Central Provinces shall be the highest Civil Court of Appeal, and, except in reference to proceedings against European British subjects and persons jointly charged with European British subjects, the highest Court of Criminal appeal and revision in and for the territories to which this Act extends.

Constitution of Court of Judicial Commissioner.

"4. (1) The Court of the Judicial Commissioner shall consist of three or, with the sanction of the Governor-General in Council, more Judges, one of whom shall be the Judicial Commissioner of the Central Provinces who shall be appointed by the Governor-General in Council, and the others Additional Judicial Commissioners who shall be appointed by the Local Government with the previous sanction of the Governor-General in Council.

(2) Every person appointed under this section shall hold his office during the pleasure of the Governor-General in Council.

Rank and precedence of Judges.

"4-A. (1) The Judicial Commissioner, whether permanent or officiating, shall have rank and precedence before the other Judges of his Court.

(2) The Additional Judicial Commissoners shall have rank and precedence among themselves according to the seniority of their appointment as such Additional Judicial Commissioners:

Provided that an Additional Judicial Commissioner permanently appointed shall be deemed to be senior to and to have rank and precedence before an officiating Judge.

(3) In this Act the expression 'the senior Judge' shall mean the Judge for the time being entitled to the first place in rank and precedence.

Exercise of jurisdiction by Judges of Court of Judicial Commissioner.

"5. (1) Except as otherwise provided by this Act or by any other enactment for the time being in force, and subject to any rules made under this Act, the jurisdiction of the Court of the Judicial Commissioner may be exercised by a single Judge of the Court.

(2) The Court of the Judicial Commissioner may, with the sanction of the Local Government, make rules to provide, in such manner as it thinks fit, for the exercise of any of its powers, a bench of two or more Judges of the Court.

Constitution of full bench and other benches.

"5-A. (1) The Court of the Judicial Commissioner may make rules declaring what number of Judges, not being less than three, shall constitute a full bench of the Court of the Judicial Commissioner, and may by such rules prescribe the mode of determining which Judges shall sit as a full bench when a full bench sitting becomes necessary.

(2) Subject to the provisions of sub-section (1), the Judicial Commissioner may determine which Judge in each case or class of cases shall sit alone and which Judges shall constitute any bench.

Power of Judicial Commissioner to transfer cases.

"5-B. The Judicial Commissioner may transfer any case, whether the hearing has or has not commenced, from the file of any Judge sitting alone to his own file or to that of any other Judge of the Court.

Power to refer question to full bench.

"5-C. Any single Judge of the Court of the Judicial Commissioner, and any bench of Judges thereof not being a full bench, may refer for the decision of a bench of two Judges or of a full bench any

question of law or custom having the force of law, or of the construction of any document, or of the admissibility of any evidence, arising in any case before the Judge or bench, and shall dispose of the case in accordance with the decision of the bench to which the question has been referred.

Appeals.

"6. A Judge of the Court of the Judicial Commissioner shall when sitting in a bench of three or more Judges of that Court, but not otherwise, be competent to try any appeal from a decree, order or sentence passed by himself, whether in a civil or criminal matter, and to adjudicate upon any proceeding connected with or arising out of such decree, order or sentence notwithstanding anything contained in section 556 of the Code of Criminal Procedure, 1898.

Rule of decision where Judges differ.

"6-A. Except as otherwise provided by any enactment for the time being in force,—

(*a*) where there is a difference of opinion among the Judges composing any bench of the Court of the Judicial Commissioner, the decision shall be in accordance with the opinion of the majority of those Judges,

(*b*) if there is no such majority, then,—

(i) if the bench is a full bench, the decision shall be in accordance with the opinion of the senior Judge of the bench:

(ii) in other cases, the bench before which the difference has arisen shall refer it to another Judge of the Court and shall dispose of the case in accordance with the decision of such Judge.

Registrar and ministerial officers of Court of Judicial Commissioner.

"7. (1) The Registrar of the Court of the Judicial Commissioner shall be appointed by the Local Government.

(2) The ministerial officers of the said Court shall be appointed by the Judicial Commissioner.

Power to Court of Judicial Commissioner to make rules.

"8. (1) In addition to any other powers to make rules expressly or by implication conferred by this Act, the Court of the Judicial Commissioner, with the previous sanction of the Local

Government, may, from time to time, by notification in the local official Gazette, make rules consistent with this Act and any other enactment for the time being in force,—

(*a*) declaring what persons shall be permitted to practise as petition-writers in the Courts, regulating the conduct of the business of persons so practising and determining the authority by which breaches of rules under this clause shall be tried;

(*b*) providing for the translation of any papers filed or produced in the Court of the Judicial Commissioner, and for the payment of the expenses thereby incurred;

(*c*) regulating the procedure in cases where any person applies to inspect a record of any Court or to obtain a copy of the same, and prescribing the fees payable by such persons for searches and copies;

(*d*) prescribing the travelling and other expenses to be allowed to witnesses in civil cases, and the fees to be allowed to Commissioners appointed by Civil Courts;

(*e*) conferring and imposing on the ministerial officers of the Court of the Judicial Commissioner and of the Courts subordinate thereto such powers and duties of a non-judicial or quasi-judicial nature as it thinks fit, and regulating the mode in which powers and duties so conferred and imposed shall be exercised and performed;

(*f*) prescribing forms to be used in the subordinate Courts for such proceedings, books, entries, statistics and accounts as it thinks necessary;

(*g*) providing for the visitation and inspection of the subordinate Courts, and the supervision of the working thereof; and

(*h*) regulating all such matters as it may think fit, with a view to promoting the efficiency of the judicial and ministerial officers of the Court of the Judicial Commissioner and of the subordinate Courts and maintaining proper discipline among those officers.

(2) Whoever commits a breach of any rule made under sub-section (1), clause (*a*), shall be punishable with fine which may extend to fifty rupees.

"9. The Court of the Judicial Commissioner shall keep such registers, books and accounts as may be necessary for the transaction of the business of the Court, and shall comply, in such form and manner as the Local Government may deem proper, with any requisitions which the Local Government may make for records of, or papers belonging to, the Court of the Judicial Commissioner or any Civil Court subordinate thereto, or for certified copies of, or extracts from, such records or papers, or for returns, statements or reports."

Registers, books and accounts, returns, statements and reports.

Amendment of Act II 1904, section 13, sub-section (1).

3. In section 13, sub-section (1), of the said Act, the following alterations shall be made, namely :—

(i) in sub-clause (*a*), for the words "five hundred" the words "one thousand" shall be substituted and

(ii) in sub-clause (*b*), for the word "five" the word "ten" shall be substituted.

Subsitution of new section for section 14 of Act II of 1904.

4. For section 14 of the said Act the following section shall be substituted, namely :—

"14. The Local Government may, by notification in the local official Gazette, invest any District Court or any Court of a Subordinate Judge or of a Munsif with the powers of a Court of Small Causes under the Provincial Small Causes Courts Act 1887, up to such value not exceeding five hundred rupees in the case of a District Court or of the Court of a Subordinate Jndge or one hundred rupees in the case of the Court of a Munsif as it thinks fit, to be exercised in cases arising within the limits of the Court's jurisdiction or in any specified area within such limits, and may withdraw any powers so conferred."

Power to invest certain Courts with Small Cause Courtjurisdiction.

Amendment of Act II, 1904, section 15, clause (*b*).

5. For section 15, clause (*b*), of the said Act, the following shall be substituted, namely :—

"(*b*) an appeal from the decree or order of the Court of a Subordinate Judge shall lie—

(i) where the value of the suit in such Court does not exceed one thousand rupees, to the District Court;

(ii) where the value of such suit exceeds one thousand rupees but does not exceed five thousand rupees, to the Divisional Court; and

(iii) where the value of such suit exceeds five thousand rupees, to the Court of the Judicial Commissioner."

Addition of new sub-section to section 17, Act II, 1904.

6. In section 17 of the said Act, the following shall be inserted as sub-section (2), the present sub-section (2) being renumbered as sub-section (3), namely :—

"(2). The Judicial Commissioner or an Additional Judicial Commissioner appointed by him shall from time to time visit, and inspect the proceedings of the Civil Courts subordinate to the Court of the Judicial Commissioner, and shall give such directions on matters not provided for by law as may be necessary to secure the due administration of justice."

Amendment of sections 22 and 26, Act II, 1904.

7. In section 22, sub-section (2), and section 26, sub-section (1), of the said Act, for the words "the Judicial Commissioner" the words "the Court of the Judicial Commissioner" shall be substituted.

THE GLANDERS AND FARCY LAW AMENDMENT ACT 1910.

Act No. XII of 1910.

[Received the Assent of the Governor-General on the 23rd March 1910.]

An Act to amend the Law relating to Glanders and Farcy.

WHEREAS it is expedient to amend the law relating to Glanders and Farcy; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Glanders and Farcy Law Amendment Act, 1910.

Repeal of part of Schedule II, Act XI, 1901.

2. Part II of the Second Schedule to the Repealing and Amending Act, 1901, is hereby repealed.

3. In section 3 of the Glanders and Farcy Act, 1899, after the words "any provision of this Act," the words "so far as all or any of the diseases mentioned in, or specified in a notification under section 2, sub-section (1), are concerned," shall be inserted.

Amendment of section 3, Act XIII, 1899.

THE PRISONS (AMENDMENT) ACT, 1910.

Act No. XIII of 1910.

[Received the Assent of the Governor-General on the 23rd March 1910.]

An Act to amend the Prisons Act, 1894.

WHEREAS it is expedient to amend the Prisons Act, 1894; It is hereby enacted as follows :—

Short title

1. This Act may be called the Prisons (Amendment) Act, 1910.

Amendment of section 52, Act IX, 1894.

2. In section 52 of the Prisons Act, 1894, the following amendments shall be made, namely :—

(1) After the words "Magistrate of the first class" the words "or Presidency Magistrate" shall be inserted; and

(2) for the first proviso the following shall be substituted, namely :—

"Provided that any such case may be transferred for inquiry and trial by the District Magistrate to any Magistrate of the first class and by a Chief Presidency Magistrate to any other Presidency Magistrate; and"

THE INDIAN EMIGRATION (AMENDMENT) ACT, 1910.

Act No. XIV of 1910.

[Received the Assent of the Governor-General on the 22nd July 1910.]

An Act to amend the Indian Emigration Act, 1908.

WHEREAS it is expedient to amend the Indian Emigration Act, 1908; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Emigration (Amendment) Act, 1910,

Substitution of new section 5, Act XVII, 1908.

2. For section 5 of the Indian Emigration Act, 1908, the following section shall be substituted, namely :—

Power for Governor-General in Council to prohibit emigration to any country.

"5. Where the Governor-General in Council has reason to believe that sufficient grounds exist for prohibiting emigration to any country to which emigration is lawful, he may, by notification in the *Gazette of India*, declare that emigration to that country shall cease to be lawful from a day specified in the notification; and from that day emigration to that country shall accordingly cease to be lawful."

THE CANTONMENTS ACT, 1910.

Act No. XV OF 1910.

[Received the Assent of the Governor-General on the 5th August 1910.]

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTIONS.

1. Short title and extent.
2. Interpretation.

CHAPTER II.

CANTONMENTS AND CANTONMENT AUTHORITIES, COURTS AND POLICE.

Cantonments.

3. Definition of Cantonments.

Cantonment Authorities and Magistrates.

4. Cantonment authority and Magistrate.
5. Cantonment authority.
6. Cantonment Magistrate.

Cantonment Court of Small Causes.

7. Appointment of Cantonment Magistrate as Judge of Cantonment Court of Small Causes.
8. Appointment of Additional Judge of Cantonment Court of Small Causes.
9. Continuance of jurisdiction of Cantonment Court of Small Causes in certain cases notwithstanding reduction of jurisdiction of Judge.

Cantonment Police.

10. Police.

CHAPTER III.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

11. Unauthorised sale of spirituous liquor or intoxicating drug.
12. Unauthorised possession of spirituous liquor.
13. Arrest of persons and seizure and confiscation of things for offence against the two last foregoing sections.
14. Saving of articles sold or supplied for medicinal purposes.

CHAPTER IV.

TAXATION AND CANTONMENT FUND.

Taxation.

15. General power of taxation.
16. Extension of Act XX of 1856 to certain Cantonments.
17. Restriction of power of taxation in Cantonments in which Act XX of 1856 is in force.
18. Power to prohibit or exempt from taxation.

Cantonment Fund.

19. Cantonment fund.
20. Custody of Cantonment fund.
21. Vesting and management of Cantonment fund.
22. Acquisition of immoveable property at cost of Cantonment fund.

CHAPTER V.

SUPPLEMENTAL PROVISIONS.

23. Extension of enactments to Cantonments.
24. Matters respecting which rules may be made.
25. Supplemental provisions respecting rules.
26. Extension of certain enactments and rules to places beyond Cantonments.
27. Cantonments in presidency-towns.
28. Protection of Cantonment authority, Magistrate and Commanding officer.
29. Registration.
30. Limitation of the operation of this Act.

CHAPTER VI.

REPEALS AND SAVINGS.

31. Repeals.
32. Savings.
THE SCHEDULE—ENACTMENTS REPEALED.

An Act to consolidate and amend certain Acts relating to Cantonments.

WHEREAS it is expedient to consolidate and amend certain Acts relating to Cantonments; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title and extent.

1. (1) This Act may be called the Cantonments, Act, 1910.

(2) It extends to the whole of British India.

Interpretation.

2. In this Act, unless there is anything repugnant in the subject or context,—

(a) "officer" means—

(i) a person who, being an officer within the meaning of the Army Act, is commissioned and in pay as an officer doing military duty with His Majesty's regular forces as defined in that Act or as an officer doing such duty in any arm, branch or part of those forces; and

(ii) a person doing military duty as a warrant officer with those forces or with any arm, branch or part thereof, whether he is or is not an officer within the meaning of the Army Act:

(b) "soldier" means a person who is a soldier of His Majesty's regular forces within the meaning of the Army Act, and is not an officer within the meaning of this Act:

(c) "spirituous liquor" means any fermented liquor, any wine, any alcoholic liquid obtained by distillation, and the sap of any kind of palm-tree, and includes any other liquid consisting of or containing alcohol which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare to be a spirituous liquor for the purpose of this Act;

(*d*) "intoxicating drug" means opium, ganja, bhang, charas and every preparation and admixture thereof, and includes any other intoxicating substance or liquid which the Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare to be an intoxicating drug for the purposes of this Act: and

(*e*) "owner" includes the person who is receiving or entitled to receive the rent of any building or land, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant.

CHAPTER II.

CANTONMENTS AND CANTONMENT AUTHORITIES, COURTS AND POLICE.

Cantonments.

Definition of Cantonments.

3. (1) The Local Government, with the previous sanction of the Governor-General in Council, may, by notification in the official Gazette, declare any place in which any of His Majesty's regular forces are quartered within the territories administered by such Government to be a Cantonment for the purposes of this Act and of all other enactments for the time being in force.

(2) The Local Government, with the like sanction, may also, by a like notification, define the limits of any Cantonment for the like purposes.

Cantonment Authorities and Magistrates.

Cantonment authority and Magistrate.

4. For every Cantonment beyond the limits of a presidency-town there shall be a Cantonment authority and a Cantonment Magistrate.

Cantonment authority.

5. (1) The expression "Cantonment authority" as used in this Act means a Cantonment committee or, where a Cantonment committee has not been constituted or has in pursuance of an order of the

Local Government ceased to exist, or for any reason cannot be convened, then, subject to any rules made under section 24, clause (5), the Commanding officer of the Cantonment.

(2) The Local Government shall determine, with respect to every Cantonment in which troops are for the time being quartered, whether or not a Cantonment committee is to be constituted.

(3) The Cantonment authority shall be deemed te be a local authority as defined in the Cattle-Trespass Act, 1871, the Local Authorities Loan Act, 1879, the Indian Telegraph Act, 1885, and the General Clauses Act, 1897.

Cantonment Magistrate.

6. The Cantonment Magistrate shall be a Magistrate appointed by the Local Government under section 12 of the Code of Criminal Procedure, 1898, and, as such, subordinate to the District Magistrate or to the District Magistrate and the Sub-divisional Magistrate, as the case may be, under section 17 of that Code.

Cantonment Court of Small Causes.

Appointment of Cantonment Magistrate as Judge of Cantonment Court of Small Causes.

7. (1) When the Local Government appoints the Cantonment Magistrate to be the Judge of a Court of Small Causes established within a Cantonment under the Provincial Small Cause Court Act, 1887, it shall, in its order appointing him to be such Judge, declare, and may by notification in the official Gazette vary, within a limit of five hundred rupees, the value of the suits which are to be cognizable by him under that Act.

(2) The provisions of section 15, sub-section (3), of the said Act shall not apply to a Court of Small Causes of which a Cantonment Magistrate is the Judge.

Appointment of Additional Judge of Cantonment Court of Small Causes.

8. When the Local Government appoints an Additional Judge of a Court of Small Causes, of which a Cantonment Magistrate is the Judge, it shall in its order appointing him to be such Additional Judge, declare, and may by notification in the official Gazette vary, within a limit of fifty rupees, the value of the suits with respect to which the functions of the Judge of the Court may be assigned to, and discharged by, the Additional Judge under section 8 of the Provincial Small Cause Courts Act, 1887.

9. A Cantonment Magistrate as Judge of a Court of Small Causes may, whatever may be the value of the suits cognizable by him as such Judge, dispose of any suit which was within the pecuniary limits of the jurisdiction of the Judge presiding over the Court at the time of the institution of the suit, and may entertain and dispose of any proceeding after decree in any such suit.

Continuance of jurisdiction of Cantonment Court of Small Causes in certain cases notwithstanding reduction of Judge.

Cantonment Police.

10. *(1)* The police-force employed in a cantonment beyond the limits of a presidency-town shall, for the purposes of the Madras District Police Act 1859, or the Police Act, 1861, or the Bombay District Police Act, 1890, as the case may be, be deemed to the part of the general police-establishment under the superintendence of the Local Government in whose territories the cantonment is situated.

Police.

(2) The area comprised within the limits of a contonment shall be deemed to be a town for the purposes of section 34 of the Police Act, 1861.

CHAPTER III.

SPIRITUOUS LIQUORS AND INTOXICATING DRUGS.

11. If within a cantonment or within such limits around a cantonment as the Local Government may, by notification in the official Gazette, prescribe in this behalf, any person not subject to military law or any person subject to military law otherwise than as an officer or soldier knowingly barters, sells or supplies, or offers or attempts to barter, sell or supply, any spirituous liquor or intoxicating drug to or for the use of any soldier or follower or soldier's wife, without the written permission of the commanding officer of the cantonment or of some person authorised by the commanding officer to grant such permission, he shall be punishable with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months, or with both.

Unauthorised sale of spirituous liquor or intoxicating drug.

12. If within a cantonment, or within such limits around a cantonment as the Local Government may, by notification in the official Gazette, prescribe in this behalf,—

Unauthorised possession of spirituous liquor.

(*a*) any person subject to military law otherwise than as an officer or soldier, or

(*b*) the wife or servant of any such person or of a soldier,

has in his or her possession except on behalf of the Government or for the private use of an officer more than one quart of any spirituous liquor other than fermented malt-liquor without the written permission of the commanding officer of the cantonment or of some person authorised by the commanding officer to grant such permission, he or she shall be punishable in the case of a first offence against this section with fine which may extend to fifty rupees, and in the case of a subsequent offence against this section with fine which may extend to one hundred rupees, or with imprisonment for a term which may extend to three months.

Arrest of persons and seizure and confiscation of things for offences against the two last foregoing sections.

13. *(1)* Any police-officer or excise-officer may, without an order from a Magistrate and without a warrant, arrest any person whom he finds committing an offence against section 11 or section 12, and may seize and detain any spirituous liquor or intoxicating drug in respect of which such an offence has been committed, and any vessels or coverings in which the liquor or drug is contained.

(*2*) Where a person accused of an offence against section 11 has been previously convicted of an offence against that section, an officer in charge of a police-station may, with the written permission of a Magistrate, seize and detain any spirituous liquor or intoxicating drug within the cantonment, or within the limits prescribed under section 11, which at the time of the alleged commission of the subsequent offence belonged to, or was in the possession of, the person.

(*3*) The Court convicting a person of an offence against section 11 or section 12 may order the confiscation of the whole or any part of anything seized under sub-section (1) or sub-section (2).

(*4*) Subject to the provisions of Chapter XLIII of the Code of Criminal Procedure, 1898, anything seized under sub-section (1) or sub-section (2) and not confiscated under sub-section (3) shall be restored to the person from whom it was taken.

14. The foregoing provisions of this Chapter shall not apply to the sale or supply of any article for medicinal purposes by a medical practitioner, chemist or druggist.

Saving of articles sold or supplied for medicinal purposes.

CHAPTER IV.

TAXATION AND CANTONMENT FUND.

Taxation.

15. *(1)* With the previous sanction of the Governor-General in Council, the Local Government may, by notification in the official Gazette,—

General power of taxation.

(*a*) impose in any cantonment which is not included in a municipality any tax which, under any enactment in force at the date of the notification, can be imposed in any municipality within the territories administered by such Government; and

(*b*) abolish or modify any tax so imposed.

(2) When any tax is leviable in a cantonment in pursuance of a notification under sub-section (1), the Local Government, subject to the like sanction, may, by a like notification, apply or adapt to the cantonment the provisions of any enactment or rules in force at the date of the notification in any municipality within the territories administered by such Government relating to—

(*a*) the assessment, collection or recovery of any tax;

(*b*) the refund or revision of, or exemption from, any such tax; and

(*c*) the punishment of any breach of such enactment or rules.

16. *(1)* The Local Government may, by notification in the official Gazette, extend the provisions of the Bengal Chaukidari Act, 1856, to any cantonment which is not included in a municipality and which is situated in any part of British India in which that Act is in force, and the Cantonment Magistrate may exercise all the powers of the Magistrate under that Act, subject only to the control of the District Magistrate and the Local Government.

Extension of Act XX of 1856 to certain cantonments.

(2) The Local Government may order that a cantonment to which the provisions of the Bengal Chaukidari Act, 1856, have been extended shall be divided into any number of cantonment

divisions, and may determine the nature of the tax to be levied on each such division according to section 10 of that Act.

Restriction of power of taxation in cantonments in which Act XX of 1856 is in force.

17. While a tax assessed according to the circumstances, and the property to be protected, of the persons liable thereto, or according to the annual value of houses and grounds, is levied under the Bengal Chaukidari Act, 1856, in a cantonment, a tax on persons practising any profession or art or carrying on any trade or calling or a tax on buildings and lands, as the case may be, shall not be leviable in the cantonment in pursuance of a notification under section 15 of this Act.

Power to prohibit or exempt from taxation.

18. (1) Notwithstanding any thing in any enactment for the time being in force, the Governor-General in Council may, by notification in the *Gazette of India*, prohibit the levy of the whole or any part of any tax imposed in a cantonment, or exempt any person by name or in virtue of his office or any class of persons, or any property or any class of property, from the operation of any such tax.

(2) Where the area subject to the authority of a municipal committee as defined in section 2 of the Municipal Taxation Act, 1881, includes the whole or part of a cantonment, nothing in section 4 or section 5 of that Act or in any other like enactment for the time being in force shall apply to so much of that area as is comprised in the cantonment.

Cantonment Fund.

Cantonment fund.

19. (1) There shall be formed for every cantonment which is not included in a municipality a cantonment fund, and there shall be placed to the credit thereof, among other sums, the following, namely:—

(*a*) subject to deductions under section 545 of the Code of Criminal Procedure, 1898, or under any other enactment for the time being in force or under any order of the Local Government, all fines recovered from persons convicted of offences committed within the cantonment against this Act or against any enactment extended or rule made thereunder,

or against the provisions of section 34 of the Police Act, 1861, or the corresponding enactment for the time being in force in the territories administered by the Governor of Fort St. George in Council or by the Governor of Bombay in Council, or against the provisions of Chapter XIII or Chapter XIV of the Indian Penal Code or of section 156 of the Army Act.

(*b*) the proceeds of taxes imposed under section 15 or levied under the Bengal Chaukidari Act, 1856, in the cantonment; and

(*c*) rents and profits accruing from property placed by the Government under the management of the cantonment authority.

(*2*) Notwithstanding anything in any enactment as to the purposes to which the proceeds of a tax are to be appropriated, the cantonment fund shall be applicable, subject to the rules under this Act, to the maintenance of the police-force employed in the cantonment and to the other purposes of this Act within the cantonment and, with the general or special sanction of the Local Government, to like objects, within or without British India, beyond the limits of the cantonment in cases in which, in the opinion of the Local Government, the application of the fund beyond those limits is for the benefit of the inhabitants of the cantonment or of any military force ordinarily quartered therein or of any detachment of any such force.

Custody of cantonment fund.

20. (*1*) Where, in or near a cantonment, there is a Government treasury or sub-treasury or a bank to which the Government treasury business has been made over, the cantonment fund shall be kept in the treasury, sub-treasury or bank.

(*2*) Where there is no such treasury, sub-treasury or bank, the cantonment fund may be deposited with any banker or person, acting as a banker, who has given such security for the safe custody and repayment on demand of the fund so deposited as the District Magistrate may in each case think sufficient.

Vesting and management of cantonment fund.

21. The cantonment fund shall be vested in His Majesty, and, subject to the provisions of this Act and of the rules thereunder and to the control of the Local Government, the management of the fund shall be entrusted to the cantonment authority.

Acquisition of immoveable property at cost of cantonment fund.

22. The cantonment fund shall be deemed to be "public revenues" within the meaning of the proviso to section 6 of the Land Acquisition Act, 1894, and any property acquired at the cost of the cantonment fund shall vest in His Majesty.

CHAPTER V.

Supplemental Provisions.

Extension of enactments to cantonments.

23. The Governor-General in Council may, by notification in the *Gazette of India*, extend to all cantonments or to any cantonment or to any part of any cantonment any enactment for the time being in force in any municipality in British India, and declare its extension to be subject to such restrictions and modifications, if any, as he thinks fit.

Matters respecting which rules may be made.

24. The Governor General in Council may make rules consistent with this Act to provide for all or any of the following matters, namely:—

(*1*) the manner in which, and the authority to which, application for permission to occupy land belonging to the Government in a cantonment is to be made;

(*2*) the conditions to be annexed to every such permission given in pursuance of such an application;

(*3*) the preparation and maintenance of registers of immoveable property in cantonments;

(*4*) the constitution of cantonment committees, the functions to be discharged by them, the conduct of, and the control to be exercised over, their proceedings, and the division of duties among the members of such committees;

(*5*) the functions to be discharged by the commanding officer of a cantonment where a cantonment committee has not been constituted, or has in pursuance of an order of the Local

Government ceased to exist, or for any reason cannot be convened ;

(6) the executive duties of the Cantonment Magistrate and his position in relation to the commanding officer of the cantonment ;

(7) the purposes to which the canonment fund may be applied ;

(8) the authority on which money may be paid from the cantonment fund ;

(9) the investment of any balance of that fund ;

(10) the execution of contracts by, or on behalf of, the cantonment authority ;

(11) the accounts to be kept by the cantonment authority, and the manner in which those accounts are to be audited and published ;

(12) the definition and abatement of nuisances for which sufficient provision has not, in the opinion of the Governor-General in Council, been made under section 23 ;

(13) the requisitions which may be made on persons having the control of sewers, drains, latrines or other things creating, or likely to create, nuisances, and the mode of enforcing such requisitions ;

(14) the prevention of the overcrowding of buildings and places in a cantonment ;

(15) the construction and maintenance, to the satisfaction of the cantonment authority, of buildings and of boundary-walls, hedges and other fences ;

(16) the regulation of the practice of agriculture and irrigation in a cantonment, the keeping of lands therein in proper order, and the felling, lopping and trimming of trees on such lands ;

(17) the regulation of encamping-grounds, sarais, markets and slaughter-houses, of traffic on roads and across unenclosed spaces under the control of the cantonment authority, and of processions and public assemblies ;

(18) the use and management of burial and burning grounds ;

(*19*) the supervision and the regulation of the use of public wells, tanks, rivers, streams, springs or other sources from which water is or may be made available for public use, and of the land in the vicinity thereof ;

(*20*) the parts of a cantonment in which persons practising any profession or carrying on any trade, calling or occupation, may be required to reside for the purpose of practising the profession or carrying on the trade, calling or occupation, and the conditions, if any, to be observed by such persons ;

(*21*) the prevention of the spread of infectious or contagious disorders within a cantonment, and the appointment and regulation of hospitals or other places within or without a cantonment for the reception and treatment of persons suffering from any disease ;

(*22*) the segregation in, or the removal and exclusion from a cantonment, or the destruction of animals suffering or supposed to be suffering from any infectious or contagious disease ;

(*23*) the suppression of mendicancy and of loitering or importuning for the purpose of prostitution, and the removal and exclusion from a cantonment of disorderly persons, of persons who have been convicted of any offence against Chapter XVII of the Indian Penal Code, or section 156 of the Army Act, or have been ordered under the Code of Criminal Procedure, 1898, to execute a bond for their good behaviour, and of persons whom the commanding officer deems it expedient to exclude from the cantonment with or without assigning any reason for excluding them therefrom ;

(*24*) the prevention of cruelty to animals and the care of animals while grazing ;

(*25*) the prevention and extinction of fires ;

(*26*) the registration of births and deaths ;

(*27*) the appointment by owners of buildings and lands in cantonments, who are absent from cantonments, of persons residing within or near cantonments, to act as their agents for all or any of the purposes of this Act or any enactment extended or rule made thereunder ;

(*28*) the powers of inspection, entry and search which may be exercised in carrying out any of those purposes, and the cases

in which breaches of enactments extended or rules made under this Act are to be cognizable offences ;

(29) the mode in which summonses, notices, requisitions and other documents are to be served on the persons to whom they are addressed ;

(30) the cases, authorities and conditions in, to and on which executive orders passed under this Act or any enactment extended or rule made thereunder may be appealed from ; and

(31) generally, the carrying out of the purposes of this Act.

Supplemental provisions respecting rules.

25. (1) The power to make rules under section 24 is subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the *Gazette of India* and in such other manner as the Governor-General in Council prescribes.

(2) A rule under section 24 may be general for all cantonments in British India or for all cantonments not expressly excepted from its operation, or may be special for the whole or any part of any one or more than one cantonment, as the Governor-General in Council directs.

(3) A copy of the rules for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Magistrate.

(4) In making any rule under clause (12) or any of the following clauses of section 24, the Governor-General in Council may direct that a breach of it shall be punishable with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to eight days, and, when the breach is a continuing breach, with fine which, in addition to such fine or imprisonment as a foresaid, may extend to five rupees for every day after the first during which the breach continues.

Extension of certain enactments and rules to places beyond cantonments.

26. The Local Government may, by notification in the official Gazette, and subject to any conditions as to compensation or otherwise which it may see fit to impose, extend to any area beyond the cantonment and in the vicinity thereof—

(a) any enactment which, with or without restriction or modification, has been extended to the cantonment or any part thereof under section 23 ; or

(b) any rule in force in the cantonment or any part thereof under clause (12) or any of the following clauses of section 24, as well as any direction there in force under sub-section (4) of section 25;

and the enactment, rule or direction specified in the notification shall, so long as the notification remains uncancelled, apply to that area as if the area were included in the cantonment.

Cantonments in presidency-towns.

27. Where a cantonment is situated within the limits of a presidency-town, the functions assigned to any authority by this Act or any enactment extended or rule made thereunder shall, subject to the provisons of any enactment for the time being in force, be discharged by such authority as the Local Government may appoint in this behalf.

Protection of cantonment authority, Magistrate and commanding officer.

28. A suit or presecution shall not be entertained in any Court against any cantonment authority, authority appointed under section 27, Cantonment Magistrate or comanding, medical or other officer for anything in good faith done or purporting to be done in pursuance of powers conferred by or under this Act on such authority, Magistrate or officer, whether the thing done was or was not authorised by the powers so conferred.

Registration.

29. (1) Section 54, paragraphs 2 and 3 and section 59, 107 and 123 of the Transfer of Property Act, 1882, with respect to the transfer of property by registered instrument, shall, on and from the commencement of this Act extend to every cantonment in British India.

(2) Where a contonment has not been constituted a sub-district or district for the purposes of the Indian Registration Act, 1908, under section 9 of that Act, the Registrar of the district in which the cantonment is situated shall cause a copy of such entries in Indexes Nos. I and II as relate to immoveable property within the limits of the cantonment to be forwarded to the Cantonment Magistrate annually or at such shorter intervals as the Local Government may prescribe.

Limitation of the operation of this Act.

30. The Governor General in Council may, by notification in the *Gazette of India*, exclude from the operation of the whole or any part of this Act the whole or any part of any cantonment.

CHAPTER VI.

REPEALS AND SAVINGS.

Repeals.

31. The enactments mentioned in the Schedule are repealed to the extent specified in the fourth column thereof.

Savings.

32. All licenses and permits given under the Cantonments Act, 1889, or under any enactment repealed by that Act, and in force at the commencement of this Act, shall be deemed to have been given under this Act.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section* 31.)

Year.	No.	Short title.	Extent of repeal.
1	2	3	4
1889	XIII	The Cantonmets Act, 1889.	So much as has not been repealed.
1891	I	The Cattle-Trespass Act (1871) Amendment Act, 1891.	Section 11.
"	XII	The Amending Act, 1891.	So much of Part I of the second Schedule as relates to the Cantonments Act, 1889.
1896	XII	The Excise Act, 1896.	So much of the Schedule as relates to the Cantonments Act, 1889.
1897	XV	The Cantonments Act, 1897.	The whole.
1898	V	The Code of Criminal Procedure, 1898.	So much of Schedule I as relates to Cantonments Act, 1889.
1903	I	The Repealing and Amending Act, 1904.	So much of Part II of the second Schedule as relates to the Cantonments Act, 1889.
1909	V	The Amending (Army) Act, 1909.	So much of the Schedule as relates to the Cantonments Act, 1889.

THE INDIAN CENSUS ACT.

[Received the assent of the Governor General on the 5th August, 1910.]

Act No. XVI of 1910.

An Act to provide for certain matters in connection with the taking of the Census.

WHEREAS it has been determined to take a census of British India during the year 1911, and it is expedient to provide for certain matters in connection with the taking of such census; It is hereby enacted as follows:—

Short title and extent.

1. (1) This Act may be called the Indian Census Act, 1910.

(*2*) It extends to the whole of British India, inclusive of British Baluchistan, the Santhal Parganas of Spiti.

Appointment of census-officers.

2. (*1*) The Local Government may appoint any person to take, or aid in or supervise the taking of, the census within any specified local area.

(*2*) Persons so appointed shall be called census-officers.

(*3*) The Local Government may delegate to such authority as it thinks fit the power of appointing census-officers which is conferred by this section.

Proof of appointment of census-officers, and their status as public servants.

3. (*1*) (*a*) A declaration in writing, signed by any officer authorised by the Local Government in this behalf, that any person has been duly appointed a census-officer for any local area shall be conclusive proof of such appointment.

(*2*) All census-officers shall be deemed to be public servants within the meaning of the Indian Penal Code.

Discharge of duties of census-officers in certain cases.

4. (*1*) (*a*) Every officer in command of any body of men belonging to His Majesty's military or naval forces or to His Majesty's Indian Marine Service or of any vessel of war,

(*b*) every person (except a pilot or harbour-master having charge or control of a vessel),

(*c*) every person in charge of a lunatic asylum, hospital, workhouse, prison, reformatory or lock-up, or of any public, charitable, religious or educational institution,

(*d*) every keeper, secretary or manager of any sarai, hotel, boarding-house, lodging-house, emigration-depôt or club, and

(*e*) every occupant of immoveable property and every manager or officer of a railway or other commercial or industrial enterprise who has at the time of the taking of the census not less than twenty persons employed under him, or living on or in such property,

shall, if so required by the District Magistrate or by such officer as the Local Government may appoint in this behalf, perform such of the duties of a census-officer in relation to the persons who at the time of the taking of the census are under his command or charge, or inmates of his house or present on or in such immoveable property, as such Magistrate or officer may, by written order, direct.

(*2*) All the provisions of this Act relating to census-officers shall apply, so far as they can be made applicable, to all persons while performing such duties under this section, and any person refusing or neglecting to perform any duty which he is directed under this section to perform shall be deemed to have committed an offence under section 187 of the Indian Penal Code.

Power of District Magistrate to call upon certain persons to give assistance.

5. (*1*) The District Magistrate, or such officer as the Local Government may appoint in this behalf for any local area, may, by written order, which shall have effect throughout the limits of his district or of such local area, as the case may be, call upon—

(*a*) all owners and occupiers of land, tenure-holders, farmers, assignees of land-revenue and lessees of fisheries under the Burma Fisheries Act, 1905, or the Upper Burma Land and Revenue Regulations 1889, or their agents,

(*b*) all village-officers and servants in estates as defined in the Madras Proprietary Estates' Village Service Act, 1894 (Madras), and

(*c*) all members of panchayats appointed under the Village Chaukidari Act, 1870 (Bengal), or the Sylhet and Cachar Rural Police Regulation, 1883, all ghatwals and all circle-tahsildars appointed under the Chota Nagpur Rural Police Act, 1887

(Bengal), and all village-headmen in the Kumaun Division of the United Provinces,

to give such assistance as he needs towards the taking of a census of the persons who are at the time of the taking of the census on the lands of such owners, occupiers, holders, farmers and assignees, or within the limits of such fisheries or in the villages or other areas for which such village-officers and servants, panchayats, ghatwals, circle-tahsildars or village-headmen are appointed, as the case may be.

(2) Such order shall specify the nature of the assistance required, and such owner, occupiers, holders, farmers, assignees lessees or their agents, and such village-officers and servants, the members of such panchayats and such ghatwals, circle-tahsildars and village-headmen shall be bound to obey it.

Asking of questions by census-officers.

6. Every census-officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the Local Government and published in the official Gazette, he may be directed to ask.

Obligation to answer questions.

7. Every person of whom any question is asked under the last foregoing section shall be legally bound to answer such question to the best of his knowledge or belief :

Provided that no person shall be bound to state the name of any female member of his household, and that no woman shall be bound to state the name of her husband or deceased husband or of any other person whose name she is forbidden by custom to mention.

Occupier to allow access, and permit affixing of numbers.

8. Every person occupying any house, enclosure, vessel or other place shall allow census-officers such access thereto as they may require for the purpose of the census, and as, having regard to the customs of the country, may be reasonable, and shall allow them to paint on or affix to the place such letters, marks or numbers as may be necessary for the purposes of the census.

Occupier or manager to fill up schedule.

9. (1) Subject to such orders as the Local Government may issue in this behalf, any census-officer may leave, or cause to be left,

(*a*) at any dwelling-house within the local area for which he is appointed, or

(*b*) with any manager or officer of any commercial or industrial enterprise who has at the time of the taking of the census not less than twenty persons employed under him,

a schedule for the purpose of its being filled up by the occupier of such house or of any specified part thereof or by such manager or officer with such particulars as the Local Government may direct regarding the inmates of such house or part or the persons employed under such manager or officer at the time of the taking of the census.

(2) When any such schedule has been so left the occupier of the house or part to which it relates or the manager or officer with whom it is left shall fill it up, or cause it to be filled up, to the best of his knowledge or belief, so far as regards the inmates of such house or part, as the case may be, or the persons employed under him at the time aforesaid, and shall sign his name thereto, and, when so required, shall deliver the schedule so filled up and signed to the census-officer or to such person as he may direct.

Penalties.

10. In any of the following cases namely:—

(*a*) If a census-officer or a person appointed to be a census-officer or a person lawfully required to give assistance towards the taking of a census refuses or neglects to use reasonable diligence in performing any duty imposed upon him or in obeying any order issued to him in accordance with this Act, or with any rule duly made thereunder,

(*b*) If a census-officer intentionally puts any offensive or improper question or knowingly makes any false return,

(*c*) if any person refuses to answer to the best of his knowledge or belief any question asked of him by a census-officer which he is legally bound by section 7 so to answer,

(*d*) if any person occupying any house, enclosure, vessel or other place refuses to allow a census-officer such reasonable access thereto as he is required by section 8 to allow,

(*e*) if any person removes, obliterates, alters or injures before the thirty-first day of March 1911, any letters, marks or numbers which have been painted or affixed for the purposes of the census,

(*f*) if any occupier of a dwelling-house or part thereof or any person with whom a schedule is left under section 9 knowingly and without sufficient cause fails to comply with the provisions of section 9 or makes any false return under that section,

he shall be punishable with fine which may extend to fifty rupees.

Jurisdiction in prosecutions.

11. (*1*) The Local Government may, by notification in the official Gazette, declare before what class of Magistrates prosecutions under this Act may be instituted.

(*2*) Unless and until a notification is published under sub-section (*1*), all prosecutions under this Act shall, in the towns of Calcutta, Madras and Bombay, be instituted before a Presidency Magistrate, and elsewhere before the District Magistrate.

(*3*) No prosecution under this Act shall be instituted except with the previous sanction of the Local Government, or with the previous sanction of some officer authorised by the Local Government in this behalf.

Records of census not open to inspection or admissible in evidence in certain proceedings.

12. No person shall have a right to inspect any book, register or record made by a census-officer in the discharge of his duty as such officer or any schedule delivered under section 9, and, notwithstanding anything to the contrary in the Indian Evidence Act, 1872, no entry in any such book, register, record or schedule shall be admissible as evidence in any civil proceeding or any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898.

Temporary suspension of local enactments and rules as to mode of taking census in municipalities.

13. Notwithstanding any thing in any enactment or rule with respect to the mode in which a census is to be taken in any municipality, the municipal authority may, at the time appointed for the taking of the census of British India during the year 1911, cause the census of the municipality to be taken wholly or in part by any method authorised by this Act.

Power in regard to expenses.

14. Not withstanding anything in any enactment or rule, in regard to municipal, local or village funds, the Local Government may direct that the whole or any part of any expenses incurred for anything done in accordance with this Act, may be charged to any municipal, local or village fund constituted for, and on behalf of, the area within which such expenses were incurred.

Power to make rules.

15. (*1*) The Governor-General in Council may make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, the Governor-General in Council may make rules providing—

(*a*) for the appointment of census-officers and of persons to perform any of the duties of census-officers or to give assistance towards the taking of a census and for the general instructions to be issued to such officers and persons;

(*b*) for the enumeration of persons employed on railways and their families and of other classes of the population for whom it may be necessary or expedient to make special provision;

(*c*) for the enumeration of persons travelling on the night when a census is taken.

(*3*) The Governor-General in Council may, by general or special order, direct that all or any of the powers conferred upon him by this section may also be exercised by any Local Government with respect to the territories administered by it.

THE CONTINUING ACT.

ACT NO. XVII OF 1910.

An Act to provide for the continuance of the Prevention of Seditious Meetings Act, 1907.

Short title.

1. This Act may be called the Continuing Act, 1910.

Continuance of Act VI of 1907.

2. The Prevention of Seditious Meetings Act, 1907, shall be continued until the thirty-first day of March 1911, and shall then expire, unless further continued.

GENERAL INDEX.

M.L.J. PAGE.

Abatement of suit—*Reversioner's suit to declare alienation by widow invalid—Decree in favour of reversioner—Appeal by defendant—Death of plaintiff reversioner pending appeal—No abatement* :—*See* HINDU LAW—REVERSIONER'S SUIT. .. 49

Accounts—*Evidence—Importance of, in evidence—Practice of Indian people to keep accounts—See* .. 182

Act XLV of 1860—*See* PENAL CODE.

———**X of 1865**—*See* SUCCESSION ACT.

———**VII of 1870**—*See* COURT FEES ACT.

———**I of 1872**—*See* EVIDENCE ACT.

———**IX of 1872**—*See* CONTRACT ACT.

———**I of 1877**—*See* SPECIFIC RELIEF ACT.

———**XVIII of 1879**—*See* LEGAL PRACTITIONERS ACT.

———**XXVI of 1881**—*See* NEGOTIABLE INSTRUMENTS ACT.

———**IV of 1882**—*See* TRANSFER OF PROPERTY ACT.

———**V of 1882**—*See* EASEMENTS ACT.

———**VII of 1887**—*See* SUITS VALUATION ACT.

———**IX of 1887**—*See* PROVINCIAL SMALL CAUSE COURTS ACT.

———**V of 1898**—*See* CRIMINAL PROCEDURE CODE.

———**V of 1908**—*See* CIVIL PROCEDURE CODE.

———**VI of 1908**—*See* EXPLOSIVE SUBSTANCES ACT.

———**IX of 1908**—*See* LIMITATION ACT.

———**XVI of 1908**—*See* REGISTRATION ACT.

Advocate in India—*Advocate forcing his opponent to produce his own client to enable him to cross-examine that client* .. 182

Appeal—Order refusing appointmentof receiver.—*No:—See* 78

Appellate Court—Functions of—*Decree prayed for against two defendants—Decree passed against one—Appeal—No memo of objections—Incompetency of Appeal Court to pass a decree against the other defendant in the absence of prayer* :—Plaintiff sued as really entitled on a pro-note executed by 2nd defendant in the name of the 1st defendant. Relief was asked for against 1st defendant for not having collected the money and paid it. The Munsif passed a decree against the 2nd defendant. On appeal by the 2nd defendant the District Judge dismissed the suit. The plaintiff preferred no appeal or memo of objections asking for a decree against the 1st defendant: *Held*, that the suit was rightly dismissed by the District Judge and that the Judge was not wrong in not passing a decree against 1st defendant which was not asked for at all in any manner. [*Kulaikada Pillai* v. *Visvanadha Pillai* I. L. R. 28 M. 229 foll. *Subra*

Appellate Court—(*Continued*). PAGE.

manien v. *Veerabadram Chetti* 18 M. L. J. 452 ; *Kuppusawmi* v. *Vijayamayengar* 18 M. L. J. 586 distinguished.]

Asundi Basavon v. *Govindappa.* .. 366

Appellate Court's powers to direct further inquiry :—*District Magistrate has no power to direct further inquiry in cases falling under S.* 195, *Cr. P. C.* :—*See* Cr. P. C., S. 428 .. 102

Arrears of maintenance—*Decree, form of* :—*See* HINDU LAW —IMPARTIBLE ZEMINDARI 394

Assignment of maintenance decree—*Validity* :—*See* T. P. A., S. 6 785

Banker and Customer—*Instructions by the customer to buy Government Promissory Notes on his behalf for Rs.* 1,000 *when his account reaches that sum—Failure of the banker to do so—Insolvency of the banker.* — *L* had on the 5th August 1906 Rs. 600 standing to the credit of his current account with *A* & *Co.* On that date he requested *A* & *Co.* by letter to buy on his behalf a Government Pronote for Rs. 1,000 when the amount of his current account reached that sum. On the 30th September 1906, he again wrote and requested *A* & *Co.* to buy the notes as there was then Rs. 1,000 to his credit. Having received no reply *L*, on 10th October 1906, called at *A* & *Co.* and was told by two officers of the Bank that his instructions would be carried out in due course. The note was not purchased and *A* & *Co.* stopped payment on 22nd October 1906. *Held* per *Munro* J.—The money was held by *A* & *Co.* in a fiduciary capacity, the effect of the customer's order being the same as if he had attended in person at the bank, drawn the money and then placed it in the hands of the Bank for the specific purpose of buying the note. Per *Abdur Rahim* J.—The customer had only a right of proof as a creditor of the Bank, as nothing was done by it to show that the sum was held as trustee or agent for a specific purpose.

Official Assignee, Madras v. *Lupprian* 428

Cause of action—*Meaning*—C P. C., S. 11 :—*See* .. 309

———*See* C. P. C. O. 2 r. 1 535

Charitable Endowments—*Madras Acts—Local Boards Act V of* 1884, *S.* 51—*Madras Regulation VII of* 1817, *Ss.*, 23,5,13—*Management of charity transferred to Taluk Board—Right of inspection of accounts in the absence of any allegation as to mismanagement —Practice—Pleadings—Powers of Taluk Board—No power to appoint trustee*:—Where a will contained the following clause—"I have appointed certain persons (named) as trustees. The said persons shall properly conduct the said charities and maintain correct accounts therefor in bound books accessible to all the persons"—and the Board of Revenue made over the management to the Taluk Board in consequence of alleged mismanagement of the trust in pursuance of S.51 of Madras Act V of 1884 :

PAGE.

Charitable Endowments—(*Contd*).

Held in a suit for inspection of the accounts of the charity against the Taluk Board by one of the trustees originally appointed by the testator: That the suit for inspection was not maintainable in the absence of any averment as to mismanagement by the Taluk Board. Where the management is transferred to a statutory body the statute should be looked into and not the instrument of trust for finding out the duties of the Manager. *Obiter*:—S. 51 of Madras Act V of 1884 has not the effect of continuing the "local agents" referred in Regulation VII of 1817. The substitution of the Taluk Board for the Board of Revenue is limited to powers and duties that are referred to in Ss. 2, 3 and 5 of Regulation VII of 1817, and does not include the power of appointing trustees; and consequently, the Taluk Board to which the Board of Revenue has transferred the management of a charity under S. 50 of the Madras Local Boards Act, has not the power to appoint trustees.

Nilayathakshi Ammal v. *The Taluk Board, Mayavaram* .. 885

Civil Procedure Code (Act V of 1908) Ss. 2 (2); O. 35, r. 5 (O. C. Ss. 2, 474)—*Decree—Order under S.* 474 *dismissing an inter-pleader suit—Inter-pleader suit by tenant—"Making claim through the lessor"*:—An order dismissing an inter-pleader suit under S. 474 of the Code of 1882 is a decree within the meaning of S. 2 of the Code, and is therefore appealable. A tenant filed an inter-pleader suit against two sets of claimants to the rent. One set of defendants claimed title as heirs of the deceased lessor. The other claimed title to the rent on the ground of the deceased lessor having acted for him, as *benamidar*: *Held*—that the suit was maintainable and that S. 474, C. P. C., (1882) was no bar, both persons "making claim to the rent" through the original lessor, so far as the plaintiffs (the tenants) were concerned. [*Dungey* v. *Angove* 30 E. R. 644 at 640 applied.]

Orr v. *Chidambaram Chettiar* 36

———**S. 9, O. C.**—*Suit of a civil nature—Stotrapatam office—Suit for declaration and injunction as to Stotrapatam office—Voluntary offerings—Damages*:—*Held* that a suit for a declaration that plaintiffs (Vadagalais) are entitled to recite Stotrams in the Conjeevaram Temple and for an injunction restraining the Tengalais from interfering with their Stotrapatam is cognizable by a Civil Court.

Though damages cannot be awarded when the offerings are voluntary, when once the voluntary offerings have been contributed, and the refusal of a person's right to participate in the fund causes damage, the Court will be entitled to award damages in those cases.

Bashiakar v. *Thatha Chariar* .. .. .. : 530

C. P. C.—(*Contd.*). PAGE.

———S. 11 (O. C., S. 13)—*Cause of action—Bar against some bar against all—When the whole number are necessary parties—Partnership* :—Cause of action does not depend upon the relief claimed and a prior suit for dissolution and winding up of partnership is a bar to a second suit against the same persons based upon the same allegations, especially in the absence of any allegation that there were any fresh transactions or any accounts to be gone into other than those which had been gone into in the prior suit. All partners should be made parties to a suit for the winding up of partnership; and if a suit is not maintainable against some of the partners by reason of a previous suit having been instituted for the same relief [*e.g.*, by reason of the bar created by S. 13, C.P.C. of 1882] the same is not maintainable even as against others alleged to be partners though not impleaded in the prior suit.

Ramaswami Aiyar v. *Veerappa Chetty* 309

———Ss. 11, O.C. 13, Cl. (5), 30—*"Parties to suit"—Right claimed in common—Decree 'in personam,' how far binding on other members of the community—Thengalais and Vadagalais—Res-judicata in execution of decree for injunction*:—Though, no doubt, judgments *in personam* bind only parties and privies, yet, the relation established between parties by such judgments is conclusive against third persons in the absence of fraud upon them. A judgment obtained against the *miras* holders of the *Adhyapakam* office is binding on the trustee of the temple as well.

A previous adjudication between the Thengalais and Vadagalais of a place wherein the parties represented other members of the caste, under S. 30, C.P.C., of 1882, as to their respective rights of *Adhyapakam* in the local temple concludes not only the temple trustee in the absence of fraud, but also all the members of the communities for all time.

But an adjudication in execution of an injunction decree against the parties to the previous suit is not binding on the members of the community who were not directly parties to the decree granting the injunction.

Srinivasa Aiyangar v. *Srinivasa Aiyangar* 546

———Ss. 11, O. C. 13—" *Parties under whom they or any of them claim"—Mulgeni-chit before suit—Landlord and Tenant—Decision not binding on mulgenidar*:—The decision in a prior suit binds the party to the subsequent suit only in respect of interests represented by the party to the former suit at the time of suit. Other interests with which he had parted before the suit and which he had ceased to represent could not properly be the subject of adjudication in the suit, and the question in each case is whether the interests in the subsequent suit were represented in the former suit by the party under whom the claimant holds in the second suit and if they were

PAGE.

C. P. C.—(*Contd*).
so represented it does not matter whether they rested in the privy before or after the former suit.

A mulgeni interest is not an interest subordinate to that of the lessor or mulgar, and a mulgar cannot be said to represent the interests of a mulgenidar who had taken the chit before suit, within the meaning of S. 13, C.P.C. [*Sitaram* v. *Amir Begam* referred to I. L. R. 8 A. 324.]

Seshappaya v. *Venktaramana* 752

———S.11—(O. C., S. 13) *Matter—Error of law*—An erroneous decision as to the maintainability of an appeal is no bar so as to preclude an appeal in another proceeding.

Kuppanna Gavundan v. *Kumara Gavundan* 961

———S. 47 (O. C., S. 244)—Scope of—Parties—*No bar to suit by mortgagee of mortgage-decree—'Parties,' meaning of—Rival parties*:—S. 244, C.P.C., is no bar to a suit by a mortgagee of the mortgage-decree for recovery of the mortgage amount from the amount in Court deposit realized in execution of the decree mortgaged. A question arising between the mortgagee of a decree and the attaching decree-holders of the mortgagor (decree-holder) is not a question arising between the parties to the suit within the meaning of S. 244, C.P.C., (1882), both the parties deriving their title from the mortgagor-judgment-creditor only.

Venkatrama Aiyar v. *Essumsa Rowthan* 330

———S. 47 (O. C., S. 244)—Parties—*Widow of judgment-debtor*:—S. 244, C.P.C. (1822) is a bar to a suit against the widow of a deceased Hindu as the latter's representative for recovery of a decree debt from the separate property of the deceased in her possession.—*See* EXECUTORS *de son Tort.*

Ramasawmi Aiyar v *Veerappa Chetti* 309

———Ss. 47, 135—(Ss. 244, 642) *Appeal—Powers of Court*:—An order under S. 642 dismissing a petition by a judgment-debtor claiming exemption from arrest is one relating to the execution of the decree and an appeal lies therefrom. A Judge who issues a warrant for the arrest of a judgment-debtor has surely power to issue orders for his release if he be found to have been illegally arrested at a time when he was exempt from arrest.

Nayana Naickan v. *Syed Gulam* 136

———S. 48 (O. C., S. 230)—*Mortgage of mortgage decree of 12 years*:—Where a person took a mortgage of a mortgage-decree after 12 years from the date of the decree which was under execution at the time, the mortgagee of the decree is entitled to the benefit of the execution, and S. 230, C.P.C. (1882) is no bar to a suit by the mortgagee to recover the mortgage

PAGE.

C. P. C.—(*Contd*).

amount due to him from moneys realized by the mortgagor (decree holder.)

Venkatarama Aiyar v. *Esumsa Rowthan* 330

——S. 60, (O. 21, r. 53) Ss. 266 (1) 273—*Decree for maintenance, a right to future maintenance and not liable to attachment*:—A decree for maintenance is a right to future maintenance and under S. 266 (*l*) C.P.C. (Act XIV of 1882) cannot be attached, nor can it be treated as a money decree capable of attachment under S. 273, C.P.C.

Nanammal v. *The Collector of Trichinopoly* 97

——S. 64, O. 21, S. 53 (O. C., Ss. 273, 276)—**Alienation pending attachment**—"*During the continuance af the attachment*"—*When alienalion good*:—Under S. 273, C.P.C. (1882), attachment only takes effect from the date of the receipt of the notice by the Court whose decree is attached. A transaction which is *prima facie* valid can only be invalidated by the attaching decree-holder showing to the satisfaction of the Court that the alienation was made during the pendency of the attachment. [*Satyacharan Mukherjee* v. *Madhub 'hunder*, 9 C. W.N. 693 ref. to.] Where an attachment and private alienation are both made on the same day, the alienation will prevail over the attachment, in the absence of proof that the alienation was made during the continuance of the attachment, *i. e.*, after receipt of the notice by the Court whose decree is attached. The legal fiction that every judicial act should be presumed to have been done at the earliest point of time, even assuming it applies to all judicial acts without qualification, is not applicable to the receipt of a notice of attachment by a Court, the same not being a judicial act.

Venkatrama Aiyar v. *Esumsa Rowthan* 330

——S. 73 (O. C., S. 295)—**Rateable distribution**—*Scope of—Claims in execution of judgment-debtor's decree and not in execution of a decree of the decree-holder—Arrangement —Claims enforceable under the attachment*:—It is essential to a valid claim for rateable distribution that the assets should have been realised in execution of the decree of the attaching decree-holder. Any arrangement entered into by an attaching decree-holder with the judgment-debtor for making the money realized in execution of the judgment-debto'rs attached decree available to the attaching creditor cannot avail the subsequent attaching creditors of the same judgment-debtor, who can only put forward claims enforceable under the attachment of the prior attaching creditor.

Venkatrama Aiyar v. *Esumsa Rowthan* 330

——S. 92 (O. C., S. 539)—**Public charities**—"*Civil jurisdiction;*" *meaning of—Jurisdiction of High Court over*

PAGE.

C. P. C.—(*Contd*).

scheme suit in Mofussal temple—Statute, construction—Letters Patent—High Courts Act, S. 9:—The words "civil jurisdiction" in S. 539 of the Civil Procedure Code of 1882 mean "Ordinary Original Civil Jurisdiction"; and the High Court of Madras has no jurisdiction to try a suit for a scheme under S. 539, C.P.C., (1882) in respect of a temple in the mofussal (*e.g.*, Rameswaram). *Obiter.*—The question is not merely one of jurisdiction but also one of private rights; and unambiguous words in the statute are necessary to take away private rights or to extend or curtail the jurisdiction of Courts like the High Court. The presumption is generally against the extension of the original jurisdiction of the High Court. The Letters Patent contemplate that all the provisions therein contained should be subject to alteration by the Indian Legislature and it would not be inconsistent with the Letters Patent for the Indian Legislature to confer upon the High Court original jurisdiction in a particular class of suits arising outside the limits of its ordinary original jurisdiction. A provision by the Indian Legislature conferring such a power on the High Court will not be opposed to S. 9 of the High Courts Act.

Advocate-General of Madras v. *Arunachellam Chettiar* .. 387

———S. 99 (O. C., S. 578)—*Scope of non-joinder of parties—Practice—Parties—Malabar Law—Karnavan, arrangements by—When can be impeached by successor*:—S. 99, C. P. C., applies to the case of non-joinder as well. It is sufficient to implead the Karnavan alone of the Tarwad as defendant, without impleading the other members, to a suit on an agreement executed by a previous Karnavan for maintenance.

Achutan Unni v. *Vasunni.* 344

———S. 105 (O. C., S. 591)—*Ground of appeal from interlocutory order in appeal from final decree.*—S. 591, C.P.C. (Act XIV of 1882) allows an appeal from a final decree though it is solely confined to an objection to an interlocutory order disallowing a petition for amendment of the plaint.

Thimma Nayanim v. *Venkata Charlu* 638

———S. 115 (O. C., S. 622)—*Provincial Small Cause Courts Act, S.* 16.—*Small Cause Suit tried as original suit—Appeal heard without jurisdiction — Revision — Practice — Procedure*:—*See Seetapaty* v. *Subbayya.* 718

———O. 1, r. 9; O. 41, r. 20.—*Procedure — Parties — Non-joinder—Partition suit—Practice*:—*Semble*:—In a suit for partition, relief cannot be given to one sharer without all the sharers being brought before the Court. It is only if relief can be properly given without all the sharers being brought in to Court, that relief can be given by the Court under O. 1, r. 9, C. P. C. But when that cannot be done, the only mode of dealing with

C. P. C.—(*Contd*). PAGE.

the matter in controversy may be to dismiss the appeal unless under O. XLI, r. 24, the absent parties are joined.

Samantha Gramany v. *Devasikamani Gramany* 364

———**O. 2, rr. 1. 2 ; O. 9. rr. 9, 8. (Ss. 42, 43, 102, 103, 157)** —*Cause of action, meaning of—First suit dismissed for default—Second suit on alternative claim—Maintainability*:—There is nothing in the language of S. 158, C. P. C. (Act XIV of 1882) which precludes its application to a case where the plaintiff does not appeal. S. 165 generally empowers the Court, under the circumstances mentioned therein, to decide the suit, whether the party at whose instance the adjournment was granted is present or not at the date fixed for hearing. [*Srimant Sagjai Rao* v. *S. Smith* I. L. R. 20 C. 736 doubted.] The cause of action in a suit has no relation to the character of the relief prayed for by the plaintiff any more than to the defence which may be set up by the defendants; and it is open to a Court to look into the pleadings, and the issues raised in each case, to determine the true cause of action.] *Chand Kour* v. *Partab Singh* I. L. R. 16 C. 98 followed and commented on.] Mere diffence in the form of statement or in the relief prayed for cannot make the causes of action different in law; and it can make no difference in principle how the plaintiff has shaped his title in the second suit if he was in a position at the time of the prior suit to base his claim on the alternative titles which he puts forward in the second suit ; and Ss. 42 and 43, C.P.C. (Act XIV of 1882) will still be a bar to the second suit if the causes of action in both the suits are substantially the same. One test which may be usefully applied in order to see whether the causes of action are the same in the two suits is whether Ss. 44, 45, 46 and 47, C.P.C. (Act XIV of 1882) would have any application to the case.

On the death of *S*, the plaintiff brought a suit for an injunction restraining the defendants from interfering with the possession, which he alleged, he had through tenants. The suit was not a declaratory suit nor one based on mere possessory title, but the entire scope of the suit was to obtain a decision that the plaintiff succeeded to the property on the death of *S*. The suit was dismissed for default. The plaintiff brought a second suit for possession basing his title to the properties as heir entitled to succeed to them on the death of *S* whether in the view that the property belonged to *S* absolutely or to her husband *N* who predeceased her. In the former suit, he based his title on his right to succeed to the property on the death of *S* as the reversioner ot *N* the husband of *S*. *Held*:—(1) That the causes of action in both suits were the same and that the second suit was barred by S. 103, C.P.C. (2) That Ss. 42 and 43 of the Code of 1882 were a bar to the second suit.

Naganada Iyer v. *Krishnamurti Iyer*. 535

C. P. C.—(*Contd.*) PAGE.

———**O 9, r. 8 (O C., S. 102)**—*Suit for two claims—Decision on one of them and dismissal of the same—Refusal to draw up decree in respect of the dismissed claim—Dismissal of the whole case for default—Order under S. 102, C P.C. (XIV of 1882) —Practice—Remand—Questions which could be dealt with by the Court to which the case was remanded*:—The plaintiff sued the defendant in the District Court for two things—first, for a decree for the amount which he had paid to release certain property from attachment, and secondly for damages on the ground of the illegality of the attachment. The District Judge held the plaintiff's principal claim relating to the sum paid to release the attachment was unsustainable in law, and dismissed the case for recovery with costs, directing that "the case will proceed on the question of damages for illegal attachment." The District Judge refused the plaintiff's application that a decree might be drawn up embodying the dismissal of his claim for the money paid. The claim for damages proceeded, but eventually the plaintiff absolutely withdrew from it; but not from the claim for the recovery of the money paid. In the result the District Judge dismissed the whole case for default under S. 102 of the Civil Procedure Code (Act XIV of 1882). The Chief Court, on appeal, held, by a majority, that the suit having been dismissed under S. 102, C.P.C., no appeal lay, *Held* that as to the principal claim of the plaintiff, that relating to the money paid to release the attachment, there was in substance a clear decision of the District Judge adverse to the plaintiff; after which, in substance no question as to that claim remained open in his Court; that as to the second claim, that for damages, the plaintiff having unconditionally abandoned his claim, there remained nothing in substance to be tried; that the case was one not proper to be dealt with under S. 102 of the Civil Procedure Code; and that the case should go back to the Chief Court to decide the appeal upon its merits. *Held*, also, that when a case was sent back to the lower appellate Court to decide the appeal on its merits, it was undesirable to express any opinion on such matters as could be dealt with by the said Court when considering the case on the merits.

Kanhaya Lal v. *National Bank of India, Ltd.* [LORD MACNAGHTEN] ... 470

———**O. 9, r. 14 (S. 109)**—*"Opposite party"—Attaching creditor of decree—Notice not necessary*:—An attaching creditor of a decree has no interest in the decree within the meaning of S. 372, C. P. C., and when his name does not appear on the record he is not an "opposite party" within the meaning of S. 109, C.P.C., so as to be entitled to notice.

C. P. C.—(*Contd.*) PAGE.

Obiter :—He is a representative of the decree-holder for purposes of execution within the meaning of S. 244, C.P.C., 1882 and is entitled to apply for execution.

Sevugan Chetty v. *Munisami Aiyar* 524

———O. 21, rr. 98, 95, 102 (S. 146)—*Applicability of r.* 98 *to purchaser from judgment-debtor after attachment " by the judgment-debtor."*—Meaning of Rule 98 of Order 21 has to be read along with Rule 95 of O. 21. O. 21, r. 98, is applicable to cases of obstruction by the purchaser from the judgment-debtor after attachment, he being the representative of the judgment-debtor within the meaning of S. 47, C.P.C.

Kuppana Gavundan v. *Kumara Gavundan*... 961

———O. 22, r. 1 (O.C., Ss. 367, 582)—*Abatement—Suit for injunction—Dismissal of suit—Appeal—Death of respondent pending appeal—No survival of appeal for costs:*—If an appeal abates on account of the death of the respondent (*e.g.* as in a suit for an injunction against the deceased defendant) the costs which the appellant was made liable to pay on the dismissal of his suit in the first Court cannot form the subject-matter of a continuing appeal.

Thiruvengada Chariar v. *Sami Iyengar* .. 760

———O. 22, r. 3, sub-r. 1 (O. C., S. 366)—"*No such application*"—*Application made bona fide by wrong person* :—An application for bringing the legal representative of the deceased party is made within the meaning of S. 366, even though the party making the application is not the real legal representative, if he makes the application *bona fide.*

Mallapragadu v. *Raghava Rao* .. 398

———O. 23 r. 3 (S. 375)—"*Relates to the suit,*" *meannig of*:—The words "relates to the suit," in S. 375 of the Code (1882) mean "relates to the matter of the claim in the case" and there is nothing in the section to restrict the relief granted in the compromise to what is prayed for in the plaint or less. *Ramdari Kuar* v. *Kakan Lal Chaudri* 13 C.W.N. 217; *Gurudes Singh* v. *Chadrika Singh* I.L.R. 36 C. 193 ; *Muthuvijaya* v. *Thandavaraya* I.L.R. 22 M. 214 ; *Jyoti Kuruvetappa* v. *Ishri Sirusappa* I. L. R. 30 M. at 480 : not applied. *Venkatappa Nayanim* v. *Thimma Nayanim* I.L.R. 18 M. 410 foll. The plaintiffs were sued in a prior litigation by their sister and the defendant's father. The sister claimed to be entitled to all the villages and the defendant's father claimed to be a lessee under her. The suit was compromised on the terms that the plaintiffs were to accept the lease by their sister to defendants' father and each of the Sisters was to be entitled to ¼ of the rent payable thereunder. One of the terms of the compromise was that the four

C. P. C.—(*Contd.*) PAGE.

sisters were to send yadasts to the lessees in possession of the villages to pay their rent to defendant's father. *Held*:—That the compromise was one relating to the suit and as such good and enforcible.

Natesan Chetty v. *Vengu Nachiar* 20

See REGISTRATION ACT, S. 17.

———O. 32 rr. 3 (2) (3) 4 (4), S. 456—*Representation of minors—Order appointing guardian ad litem—Absence of evidence of affidavit—Presumption of regularity*:—In a case where the question was whether certain minors were properly represented at the hearing of a suit in which the decree now impugned was made, the order appointing a guardian *ad litem* of the minors was on the record, but no affidavit required by S. 456 of the Civil Procedure Code (Act XIV of 1882) was forthcoming. *Held*, that it must be presumed, in the absence of evidence to the contrary, that everything was regularly and properly done; and that the minors were properly represented by the guardian *ad litem* appointed by the Court.

Musammat Bibi Walian v. *Banke Behari Pershad Singh* I. L. R. 30 C. 1021, distinguished.)

Munnu Lal v. *Ghulam Abbas* .. 591

———O. 38 r. 5; O. 1, r. 4 (a)—*Transfer of case—Pending attachment—Jurisdiction to deal with.*—Where in a suit the Court had passed a conditional order of attachment but before passing the final order, the suit is transferred to another Court. *Held* the latter Court has got jurisdiction to deal with the pending attachment.

Kandasami Pillai v. *Arunachala Nadan.* 980

———O. 40, rr. 1 to 3, S. 92, Ss. 503, 539—*Subject of suit—Scheme suit for temple without a prayer for removal of trustees*:—In a suit for a scheme in respect of the management of temple without a prayer for the removal of the trustees, the property of the temple is the subject of the suit within the meaning of S. 503, C.P.C., and the Court is competent to direct the appointment of a receiver.

Veeraraghava Thathachariar v. *Krishnasamy Thathachariar* 638

———O. 41, r. 21, S. 561—*Memo of objections—Costs*:—Memorandum of objections filed under the old Code (of 1882) cannot be pressed if the original appeal itself is not heard, and the respondent is not, as a matter of right, entitled to his costs on his memorandum which has proved futile.

Muthu Nadan v. *Nagalingam.* 878

———O. 45, r. 13 (2) (c)—"*Stay of execution of the decree appealed from*"—*Privy Council appeal—Stay of execution*:—Until the admission of the appeal, no decree can be said to have been 'appealed from", and, consequently, a Court can only stay

C. P. C.—(*Contd.*) PAGE.

execution under O. 45, r. 13 (2) (*c*) after the grant of a certificate for the admission of the appeal.—*Venkata Reddi* v. *Obli Reddi* 140

———O. C., S. 505—Appeal—*Order refusing to accord sanction for appointment of Receiver*:—No appeal lies from an order of the District Judge refusing to accord his sanction for the appointment of a Receiver under S. 505 C.P.C., (1882)—*Kayarunisa Begum* v. *Sakina Bibi* 78

Compromise—Construction:—Where a compromise in connection with a suit, after stating that the right to a trusteeship has remained in the family of the plaintiff and of the first defendant, went on to provide that the plaintiff's rights should after his death be exercised by his heirs and the first defendant's rights should be exercised by him and second defendant, and after the death of both of them, by their heirs. *Held*:—That its effect was to constitute the representatives of the two branches of the family for the time being joint trustees and to give them joint interests as joint owners in the trust properties.

Thiagaraja v. *Rathnasabapathi* .. 421

Contract Act, S. 2—Consideration—" *At the request of the promisor* ":—*See* NEGOTIABLE INSTRUMENTS ACT .. 144

Contract Act, S. 25, Cl. 3—*Promise to pay a time-barred debt—Essentials. Held*, that the words "balance due Rs. 80" written in the plaintiff's accounts with the signature of the debtor is not a promise within the meaning of S. 25, Cl. 3, of the Contract Act, to pay a time-barred debt. *Semble*:—The promise to which S. 25, Cl. 3, of the Contract Act refers is a promise to pay with a consciousness that the debt is barred.

Ramasawmi v. *Kuppusawmi* 656

———S. 63—*Scope of—Conditional release—Validity*:—A release contingent on the happening of a future event is a good release; and S. 63 of the Contract Act is wide enough to cover condtional releases. Difference between the English and Indian law pointed out. A release of a claim which can after decree be enforced as against the assets of an institution, made conditional on the happening of a future event, is valid.

Abraham v. *Lodge " Good Will"* 383

———Ss. 64, 73, 74—*Vendors and Purchasers—Deposit—Breach of contract, forfeiture—Time, if essence of contract—Penalty, meaning of—Deposit whether "benefit derived under the contract."* Per *Wallis* J. (*Sankaran Nair* J. *contra*)—A deposit, though in money, for the performance of a contract must be regarded as outside of and collateral to, the main contract; and S. 64 of the Indian Contract Act does not cover the case of a de-

posit of earnest money. *Semble* : Even if S. 64 covers the case of a deposit, it is open to the parties on the principle *quilibet potest renunciare juri pro se introducto* to provide for the forfeiture of the deposit on default of performance. Ss. 73 and 74 of the Indian Contract Act deal with the right to recover compensation for breach of contract, and do not deal with the right of the defaulting party to recover back the deposit he has paid or with the right of the other party to retain it. A deposit agreed to be forfeited is not agreed on as liquidated damages but goes in reduction of damages ; and the distinction drawn by courts of equity between stipulation for liquidated damages and stipulation for penalties has not any bearing on a deposit of earnest money. Per *Sankaran Nair* J. :—A deposit by a purchaser under a contract of sale of land, is not forfeited by him where there is no repudiation or abandonment of the contract by him ; and where the vendor rescinds it before the contract is put an end to by the purchaser, he cannot retain the deposit but is only entitled to be compensated ; *i.e.*, where the damage sustained can be assessed and it is below the deposit amount it will not be forfeited, and where no damage is sustained, the deposit should be restored to the purchaser. Time is not of the essence of the contract and a purchaser is entitled to perform his part of the contract within a reasonable time after the expiry of the due date. Ss. 73 and 74 of the Indian Contract Act are intended to get rid of the distinctions between penalties and liquidated damages and S. 74 shows that a deposit, as such only, is not forfeited by any breach of contract. The word " penalty" in S. 74 means any provision intended to compel the peformance of a contract and includes a deposit. A deposit is a benefit derived under the contract within the meaning of S. 64. S. 64 is applicable to cases of deposits also and its scope is not restricted to contracts voidable under S. 19 and 19 A. A provision for forfeiture of a deposit in default of a person finding purchasers for the whole plot of land or even any small portion of it within a specified day is a penalty and can be relieved against. The rule of law that the distinction between penalty and liquidated damages does not apply to a pecuniary deposit is not applicable where the damages may be accurately estimated. *A* agreed with *B* to purchase (or rather to secure purchasers for) certain lands from *B* for Rs. 41,000, out of which a sum of Rs. 4,000 was paid as "advance," ; Rs. 17,000 was to be paid before 24th May ; for the balance a mortgage was to be executed. The plaintiff was to forfeit the advance if he failed to pay before the 24th May and obtain the sale-deed. If there was a default on *B*'s part to execute the sale-deed before that date he was to return the deposit with an additional sum of Rs. 4,000. *A* failed to secure purchasers for the entire lands before the

Contract Act.—(*Contd.*) PAGE.

specified day. *B* sold the lands afterwards for more than Rs. 41,000. The contract contained a stipulation to the effect that *B* was to execute the conveyance either in favour of the purchaser or of those appointed by him. *Held* :—Per *Wallis* J. :—That the last stipulation cannot mean that the purchaser had a right to make the vendor part with his lands in parcels to third parties for an apportioned amount of the purchase-money : its only effect being to oblige the vendor on payment of the purchase-money to execute separate conveyances of different parcels of the lands if the vendor so desired. *Held also* :—That the deposit is forfeited on breach of the contract by *A*. Per *Sankaran Nair* J. :—That *A* never abandoned the contract or repudiated it and that *A* was entitled to perform it within a reasonable time after 24th May and the contract having been repudiated by *B* on 25th May, *A* was entitled to recover the deposit.

Natesa Aiyar v. *Appavu Padayachi.* 230

———**Ss. 73, 74**—*Scope of* :—*See* S. 64 .. .. ..

———**S. 131**—*Discharge of Surety* :—Mere forbearance to sue and allowing action against principal to be barred in discharge of surety—*See* PRINCIAAL AND SURETY 633

———**Partition**—*Provisional sale by sharer—Rights of vendee*:—*See* DEED—CONSTRUCTION. 79

Co-Tenancy Partition—*Provisional deed—Construction—Covenant to make another partition at the end of term—Sale of undefined share by one of the sharers—Rights of vendee—Necessary party to suit—Suit for partition by vendors—Limitation Act, S. 22* :—Three brothers partitioned their properties provisionally by means of an award which provided *inter alia* that until a certain year "Sarvajit" each should enjoy the lands allotted to his share according to the division then made, and that at the end of the term all profits and losses should be made equal and the said lands divided equally. One of the parties sold half a visam of his share to the plaintiff and allowed another portion to be sold for arrears of rent. In a suit by the vendee of the undefined share: *Held*, on a construction of the award—(1) That the joint tenancy or tenancy-in-common which existed before the award was not finally put an end to but continued to remain till the end of Sarvajit though subject to separate enjoyment of special allotments till then. (2) That the conveyance by one of the sharers was a valid transfer of all the sharers interest conveyed and that the plaintiff was entitled to maintain a suit for partition of the whole land within 12 years from Sarvajit. (3) That even assuming that the vendor-sharer was responsible for the rent sale of a portion of the property in the sense that he could have avoided the rent sale by payment of rent, the property sold must be held to have been impressed with the

Co-Tenancy Partition.—(*Contd.*) PAGE.
liability to re-partition at the end of Sarvajit and that the right to repartition of the vendor-sharer or his vendee was not consequently lost. (4) That the purchaser in rent sale was a necessary party to the suit for partition by the vendee. (5) That the purchaser in the rent sale having been made a party to the suit after the expiry of 12 years from Sarvajit, the suit was liable to be dismissed against all the defendants, it being impossible to give any relief to plaintiff against others without joining the purchaser in the rent sale.

Rhagavalu v. *Veeravadhanta* 79

Co-uralans—*Joint trustees*—*See* LIMITATION ACT, S. 30 .. 340

Court Fees Act, S. 7, Para 4 Cl. (*c*)—*Fees on suit for declaration that deed is not binding.*—The question whether S. 7, Para 4, Cl. (*c*) of the Court Fees Act applies or not must depend on the substance of the claim and not on the mere words which a plaintiff may choose to introduce into his plaint with reference to it. *Held* that a suit wherein the plaintiffs prayed for declaration that a Jenm sale deed of the suit properties was not valid and binding on the tarwad of the plaintiffs almost all the plaintiffs having been parties to the deed through their mother as guardian, should be stamped with *ad valorem* fee as for cancellation of the deed.

Achammal v. *Achammal* 791

———**S. 11** — "*Mesne profits*" — *Future mesne profits from plaint date, Court fee on, not payable*:—S. 11 of the Court-Fees Act applies to a claim for mesne profits for which an amount can be, and has been, claimed by the plaint; and consequently Court-fee is not payable on future mesne profits decreed from the date of plaint up till delivery. *Ramkrishna* v. *Bhimabai* 15 B. 416 foll.—

Saminatha v. *Muthusami* 98

———**Sch. I, Art. 1, S. 7, Cl. IX**—"*Subject-matter in dispute*" *in appeal—Redemption suit—Appeal — Attack on redemption right and claim for larger amount by mortgagee as well as mortgagor—Melcharth by trustee of Devaswom—Non payment of consideration no sufficient ground for holding document sham—Prima facie consideration—Right of kanomdar to question extent of consideration*:—In suits for redemption and in appeals in those suits wherein the right to redeem forms the main question in dispute, "the subject-matter in dispute" for the purposes of Art. 1, Sch. I, of the Court Fees Act, is the existence of the right to redeem, any question as to the amount payable as the condition of redemption being merely incidental to that right; and the value of the subject-matter is the principal money secured by the mortgage. Consequently, in an appeal from a suit to redeem a kanom, where the appellants (mortgagees) questioned the plaintiff's right to redeem and also claimed a larger amount in case of redemption, the value of the subject-matter in dispute in appeal is the principal money secured by the kanom. The trustee of a Dewaswom gave a

Court Fees Act.—(*Contd*).) PAGE.

melcharth, the melcharthdar undertaking to redeem a prior kanom and pay purapad which was at a rate higher than that under the prior kanom. A sum of Rs. 5,000 also said to have been paid as a part of the consideration was found not to have been in fact paid. The prior kanomdar contended that the melcharth was sham, and, even if intended to be operative, was bad as the trustee in granting the melcharth without receiving the money acted to the prejudice of the Devaswom. *Held*; that the circumstance that the Rs. 5,000 had not been paid was no sufficient ground for holding that no interest was intended to pass. *Held further*: that even if the Rs. 5,000 was not received by the trustees, there was *prima facie* good consideration for the melcharth and that it was not competent to the kanomdars to question the extent of the consideration.

Sekharan v. *Eacharan* 121

Court of wards—Acknowledgment by:—*See* LIMITATION ACT. S. 19 808

Criminal Procedure Code (1898) S. 195 (a) & (c)—*Application for sanction—Transfer*:—No transfer of an application for sanction can be made to a Court other than one to which the Court in which the offence was committed, is subordinate, a sanction granted by such other Court being useless for the purpose of starting a prosecution. Their Lordships also thought they need not transfer the application to the High Court.

Ekambareswara Iyer v. *Veerabadra Thevan* 982

———**Ss. 195, 428**—*Appellate Court's powers to direct further inquiry*:—*See* Cr. P. C., S.428 102

———**Ss. 233, 239—Joint trial**:—Where the charge against three or four accused persons was that they passed certain resolutions defamatory of the complainant and published them, and that against the fourth was that he transmitted the resolutions to a newspaper in Bombay : *Held* that the trial of the first three accused jointly with the fourth was illegal, in the absence of any evidence that the offences were committed in the " same transaction,"

Krishna Doss Vital Doss v. *Emperor* 423

———**S. 235**—"*Same transaction,*" *meaning of—Insurance Company in fraud of the public—Dharkast holders or applicants —Not subscribers—*"*Company varu,*" *construction—Conduct of accused—Effect of, in the construction of Articles of Association*: Per *Abdur Rahim* J. :—In order that a series of acts or several acts may constitute one and the same transaction within the meaning of S. 234, Cr. P. C., there should be not only community of purpose but also continuity of action. The mere existence of some general purpose or design is not sufficient to make all acts done with that object in view, part of the same transaction. The purpose in view must not be too general and vague but must be something particular and definite such as where a man with the object of misappropriating a sum of money or of cheating a particular individual of a certain amount falsifies

Cr. P. C.—(*Contd*). PAGE.
books of account or forges a number of documents. A series of acts of misappropriation or cheating in pursuance of a general policy of misappropriation or cheating the public will not form one and the same transaction, each act therein being complete in itself. Per *Benson* J.—Whether any series of acts is so connected or not as to form one and the same transaction must necessarily depend on the exact facts of each case, but they are so varied in character that it is impossible to provide a complete accurate definition though there is usually no great difficulty in deciding whether any particular case comes within the rule. An insurance fund was started by the accused with the object of enabling middle class people to secure "high profits" in return for the money subscribed by them. The maximum amount to be paid by each "diploma-holder" or applicant, at the rate of Re. 1 a month was Rs. 53; and at the end of each year half the amount of money collected during the year was to be distributed among the "nominees" of the "applicants" who happened to die in the year, subject to a maximum of Rs. 1,000. The first three Rupees to be paid by each subscriber was to be treated as entrance fee and that together with 3 annas in every rupee of the subscription was to go to the "Company people." The Company in the very nature of things could go on only so long as there was a large number of new applicants and a very limited number of deaths. The accused, directors, submitted to the Registrar the names of the applicants and issued notices to them in accordance with the rules of the Companies Act. The directors (six in number) were charged *inter alia* with having misappropriated 3 distinct sums during a period extending over nearly two years and some of them with cheating and falsification and tried together. *Held* :—(1) That there was a misjoinder of charges and the trial was bad. (2) That in the circumstances of the case the words "Company people" in the rules mean only the directors and not the diploma-holders, and that the conduct of the accused in treating the diploma-holders as shareholders by giving notice to them could not override the Articles of Association. (3) That though the whole scheme was in fraud of the unwary and credulous public, no offence was committed in the appropriation by the directors of money set apart according to the rules to the "Company people."

Venkatadri v. *Emperor* 220

———S. 352—*Prosecution evidence defective—Supplemental prosecution evidence*:—*Per Rahim* J.—It is the duty of the prosecution to prove their allegations by means of sufficient and reliable evidence; and if the evidence of the prosecution is neither satisfactory nor conclusive, that defect cannot be cured by the fact that the accused is unable to make out positively that such evidence is false and has been manufactured by any particular person or persons interested in the prosecution. In a criminal trial even if the evidence in support of a charge is false, it

Cr. P. C.—(*Contd*). PAGE.

would more often than not be impossible for an accused person to show how it came to be fabricated 657

———**S. 423.**—" *Alter a finding*"—*Powers of appellate Court to reverse a conviction for an offence and find the accused guilty of abetment of the offence* :—It is not open to a Court to find a man guilty of the abetment of an offence on a charge of the offence itself. S. 423 has to be read with Ss. 237 and 238, Cr.P.C. 11 B. H. C. R. 210 foll. The appellate Court, while reversing a conviction for an offence, is not competent to convict the accused of abetment thereof.

Kannaya v. *King-Emperor*. 84

———**Ss. 429, 495—Appellate Court's powers to direct further inquiry** :—A District Magistrate has no power to order further inquiry by a Subordinate Magistrate in regard to a matter dealt with by him under S. 195, Cr. P. C. The power to take or call for further evidence given by S. 428, Cr. P. C., is expressly limited to appeals under Ch. 31 of the Code and does not extend to proceedings under S. 195, Cr.P.C. 30 M. 311 foll.

Krishna Reddi v. *King-Emperor* 102

———**Ss. 437, 119—Order for fresh inquiry** *in case disposed of under S.* 119—*No jurisdiction*—" *Discharged* " *in S,* 437, *meaning of*—*Cr. P. C.*—*Charge*—*Discharge, meaning of* :—The jurisdiction given under S. 437, Cr. P. C., to order further inquiry cannot be applied to cases under Ch. VIII, Cr.P.C., at any rate, where before making an order under S. 119, Cr.P.C., the Magistrate has called on the person into whose conduct the inquiry is made to establish his defence. *Quaere* :—Whether S. 437 will apply to cases disposed of under S. 119, Cr. P. C., before calling on the person to establish his defence. The word "discharged" in S. 437 is equivalent to "discharged within the meaning of Ss. 209, 253, 259, Cr. P. C." The meaning of the word "discharge" in S. 119, Cr. P. C., is non-technical and merely means permission to depart. The word "charge" as applied to offences is used in two senses in the Code. In Ch. XIX and in Ss. 210 and 254, it is the formal statement of the case which the accused has to meet; and in S. 253 it is used in the popular sense of accusation.

Velu Tayi Ammal v. *Chidambara Pillay* 137

———**S. 488**—*Applicability*—*Essentials*—*Relationship of husband and wife*—*Mahomedan Law*—*Marriage*—*Talak or Divorce*—*Rajai and Bayan Talaks*—*Iddat explained* :—An irrevocable divorce does not completely destroy the relationship of husband and wife until after the expiry of the period of Iddat, and a wife in that position is entitled during Iddat to an order for maintenance under S. 488, Cr. P. C. On a petition by the wife under S. 488, Cr. P. C., a Magistrate can make or enforce

Cr. P. C.—(*Contd*). PAGE.

an order under the section only if the relationship of husband and wife exists between the petitioner and the counter-petitioner. It is not only competent to a Magistrate to refuse to enforce an order duly made under S. 488, Cr. P. C., on the ground that the relationship of husband and wife has ceased to exist since the date of the order, but he is also bound to abstain from enforcing his order under such circumstances.

Syed Saib v. *Meeram Bee* 12

——**S. 510**—*Chemical Examiner's Report—Essentials*:—Per *Abdur Rahim* J.—A Chemical Examiner's report is admissible in evidence without the Chemical Examiner being called as a witness. But the report can be of no use unless there is proof of the identity of articles found during investigation and sent to the Chemical Examiner with the articles examined by him.

Ramayya, In re 657

——**S. 517**—*Properties partly self-acquired and partly joint family property*:—Where a mother prosecuted her daughter for theft of certain jewels, some of which were joint family property and others were self-acquired property of the daughter, and she was discharged, and the Magistrate ordered that the jewels should be given to the mother and daughter on their joint receipt: *Held*, that the Magistrate had jurisdiction under S. 517, Cr.P.C., to make the order and that the order was good. The daughter was not entitled as of right to an order in her favour alone, merely because of her discharge in respect of the offence of theft of the jewels in question.

In re Kanagasabai. 425

Crown—*Ownership in waste lands and islands—Godavari delta lands—Limitation Act, Art.* 149—*Limitation against the Crown—Onus—Forest Act—Notification constituting a reserved forest*:—The rule of English law is that islands arising out of the sea belong *prima facie* to the Crown: and the same rule would apply in India in the absence of local usage or statutory enactment to the contrary, though the reasoning on which it was sought to be based will not hold good after. Where a person has proved possession of the land notified by the Government as a reserved forest as against the Crown for 20 years prior to the notification, it rests upon the Crown to prove that it has a subsisting title by showing that the possession of the claimants commenced, or became adverse, within 60 years before the notification. [*Secretary of State* v. *Vira Rayan* 9 M. 175; *Secretary of State* v. *Barotti Haji* 15 M. 315; *Secretary of State* v. *Kola Bapanamma Garu* 19 M. 165, ref. to.]

Sri Raja Chilikani Ram Rau v. *The Secretary of State* .. 66

PAGE.

Decree—Confirmation on appeal—*Power of the First Court to alter it:—Held* that the First Court had no jurisdiction to alter a decree after it had been affirmed on appeal by the Appellate Court.

Lala Brij Narain v. *Kunwar Tejbal Bikram* 587

———**Form of**—*Specific performance, suit for—Contract for sale of lands by some on behalf of themselves and some minors—Contract found not binding on minors—Contract indivisible.—See* SPECIFIC RELIEF. 328

Deed—Construction—Partition deed—T. P. A., S. 100—*Charge—General and specific language—Wide and indefinite language:*—Two brothers had a partition made of their family properties. The partition deed, after providing that one of the brothers was to pay a certain debt, contained the following clause:—" If either of the parties should fail to observe the provision, the party in default shall pay to the other party who has sustained loss twice the amount from his properties." *Held*, on a construction of the deed, that a charge was created on the properties. Distinction between 'wide language' and 'indefinite language' pointed out.

Manickam Pillai v. *Audinarayana Pillai* 407

———**Gift by Native Christians—Construction—Joint tenancy—Succession Act, S. 93, ill.**—*Applicability to gifts —T.P.A., S.* 45—*Applicability to gifts:*—Where a Native Christian gifted away his property to his three children and two of the children died and the father afterwards mortgaged the properties to a stranger: *Held*:—That the father's mortgage did not convey any title, he himself having no title to the properties. (2) That the surviving child took his brother's interests by survivorship. The principle of joint tenancy laid down in the illustration to S. 93 of the Succession Act is applicable to wills as well as to gifts, The difference in date as to the handing over of managements to the several donees is no ground for holding in favor of tenancy in common. S. 45 of the Transfer of Property Act relates to transfers for consideration and does not apply to gifts. *Naorojee Manickji Wadia* v. *Pherozbai* I.L.R. 23 B. 80. [28 A. 38 dist.]

Gabriel v. *Innas* 377

———**Sham**—*Non-payment of consideration no sufficient ground for holding document sham.*

Sekharan v. *Eacharan* 121

Deposit—*Forfeiture—See* C. P. C., O. 21, r. 86.

———**Forfeiture of**—*Sale, contract of:—See* CONTRACT ACT, S. 64 230

———**Relations between depositor and depositee**—*See* LIMITATION ACT, ART. 145 41

PAGE.

Easements Act, Ss. 5, 13—*Right of way—Not continuous—Severance of tenements—Effect of—Right to light and air—Obstruction—Right of suit—Essentials of—English and Indian law—Compensation—Injunction—Mandatory—Physical comfort, English and Indian standard of:*—A right of way is not continuous easement and does not pass on the transfer or bequest of the dominant tenement to the transferee or devisee, in the absence of express words to that effect, even though the passage over which the right of way existed was used for the passing of scavengers at the time the vendor owned both the dominant and servient tenements. The right to light and air is a right as between the owners of the dominant and servient tenements, and the owner of the servient tenement cannot justify his action in shutting out the light and air that used to pass from his tenement to the dominant tenement on the ground of possible light and air in consequence of changes made by the owner of the dominant tenement which might be a source of additional light to the latter. The extent of the right to light and air under the Easements Act is determined by the quantity of light and air that has been enjoyed for the prescriptive period, but every infringement of it cannot afford a cause of action for compensation. Substantial damage is necessary to afford a cause of action for compensation, or injunction, and damage in the case of light is not substantial unless the infringement is likely to injure the plaintiff by affecting the evidence of the easement or by materially diminishing the value of the dominant heritage or unless it interferes materially with the physical comfort of the plaintiff. The difference between the English and the Indian law on the question pointed out. As regards the easement to the free passage of air, substantial damage is caused only if the act done interferes materially with the physical comfort of the plaintiff. The difference between the standards of physical comfort in England and India pointed out. The closing up or the complete obstruction of the only window in a room is a material interference with the physical comfort of the occupant of the room. The injury cannot be considered small and justifies the Court in granting relief by way of mandatory injunction. The owner of the dominant tenement is not entitled to enlarge his window, but will be entitled to a mandatory injunction directing the owner of the servient tenement to remove so much of the obstruction(*e. g,* wall) as interferes with the free passage of light and air to the extent of the prescribed user and enjoyment.

Esa Abbas Sait v. *Jacob Haroon Sait* 291

Estoppel by representation—*Mortgage by majority of trustees—Minority, objection by— No estoppel of minors.—See* TRUST.

Estoppel—*Executor— Adverse title to will:—See* WILL. 687

PAGE.

Estoppel of tenant —*Scope of principle:—See* EVIDENCE ACT, S. 116 355

Evidence, oral, appreciation—*No fixed relation between gains of usury and truth:—See* 182

———**Custom**—*Wajib-ul-arzes—Their value in evidence — Instance, evidence of an* :—There is no class of evidence that is more likely to vary in value according to circumstances than that of the Wajib-ul-arzes. [*Muhammad Inam Ali Khan* v. *Sardar Husain Khan* and *Musammat Parbati Kunwar* v. *Rani Chandarpal Kunwar and others* affirmed and followed.] *Held,* that where, from internal evidence, it seemed probable that the entries recorded in Wajib-ul-arzes connoted the views of individuals as to the practice that they would wish to see prevailing rather than the ascertained fact of a well-established custom, the appellate Courts in India, in holding that the custom was not proved, properly attached weight to the fact that no evidence at all was forthcoming of any instance in which the custom sought to be established by such entries was proved.

Anant Singh v. *Durga Singh* 604

Evidence Act, S. 33—*Incomplete evidence of witness whose cross-examination could not be finished:*—Evidence taken in part of the deposition of a witness who died before his cross-examination was closed ought not ordinarily to be acted upon.

Rosi v. *Pillamma.* 400

———**S. 114**—*Under possession of ingredient of bomb—No explanation:—Rahim J.*—The presumption under S.114 of the Evidence Act cannot be invoked to the help of the prosecution for murder on the bare circumstance that the accused had got one of the implements which form an ingredient of a bomb prepared by a blacksmith some days before the occurrence and had given a false name to the blacksmith and had failed to give a proper account as to what became of the implement afterwards. 657

———**S. 116**—*Landlord and Tenant—Estoppel of tenant—Scope of principle:*—The estoppel of a tenant from denying his landlord's title extends only to the person who let him into possession, or to his successor in interest; and consequently if a person entitled to the land gains possession of the land by collusion with the tenant in possession by getting the tenant to attorn to him, he will get a good title as against all persons but those who let the tenant in possession.

Annayyan v. *Chinnan* 355

PAGE.

Executor—*Estoppel—adverse title to will:—See* WILL. 687

——— **'De son tort'**—*Widow of joint co-parcener not an executor 'de son tort' in possession of joint family estate* : - An executor *de son tort* is a person who intermeddles with the estate of a deceased person. The widow of a deceased undivided Hindu co-parcener in possession of the joint family estate is not an executor *de son tort* in any sense in respect of the deceased's estate, as at his death his estate passes by survivorship to the other co-parceners.

Ramasawmi Aiyar v. *Veerappa Chetty* 308

Explosive Substances Act, S. 5.—*Conviction—Essentials:—Per Rahim* J.—Under S. 5 of the. Explosive substances Act it is not necessary to come to any more definite finding than that the accused had possession of the explosive substance under suspicious circumstances; but mere suspicion would not suffice for a conviction under S. 3 of the Explosive Substances Act, the gist of the latter section being the causing of an explosion unlawfully and maliciously which must be proved in the ordinary way. 657

Fatehas :—*See* MAHOMEDAN LAW—WAKF 254

Forfeiture of deposit:—*See* C.P.C., O. 21, r. 86.

General Clauses Act, S. 6—*Not applicable to rules of limitation.*

Kaliamma v. *Palappakkara Manakal* 347

Government and Ryotwari holder—*Repair of irrigation works—Right of suit for damages caused by Government's non-repair—Statute—Construction* :—Government is not under an obligation with regard to each individual ryot to repair irrigation works whenever they require repair; and a ryotwari holder has no right of suit for damages against Government in respect of loss incurred by him owing to failure of water caused by the non-repair. [*Madras Railway Company* v. *Zemindar of Karvatenagram* explained.] No liability arises in cases of non-feasance by the mere imposition of a duty by a statute, in the absence of an imposition of the liability itself either expressly or by clear implication by the statute itself.

The Secretary of State for India v. *Veeran Reddi* 869

Grant—Construction — *Waters— Right of irrigation—Stream, meaning of—Ownership in bed of stream—Madras Acts, VII of* 1865 *and III of* 1905—*Presumption—Contract Act, S.* 69—*Voluntary payment—Payment of water-cess, on demand—Not voluntary payment*:—The non-reservation of river beds in a grant of a Zemindari by Government does not justify any presumption more than that the Government fixed the revenue with reference to the extent of land under irrigation at the time of the grant. Where the origin of title is known to the contrary the fact that

Grant.—(*contd*). PAGE.

irrigation has been permitted free of charge for a series of years cannot justify a presumption of a grant of irrigation rights, even though it may be evidence of a lost grant if the origin of title were not known. An arrangement for the upkeep of the channels by the parties interested does not necessarily lead to any inference as to the supply of water free of charge. By reason of S. 2 of Madras Act III of 1905, all standing and flowing waters not belonging to any one else are the property of the Government, subject to easements and natural rights of other landholders; and the body of water forming the river belongs to the Government within the meaning of Madras Act, VII of 1865, even though the bed may be vested in the owners of land along the banks, so as to give them the right to accretions or 'lankas' forming therein. A stream is a body of water having as such body a continuous flow in one direction. The onus is on the Zemindar to prove the extent of his right to irrigation with Government water free of charge. As regards the extension of irrigation in Jerayati land, *i.e.*, the conversion of 'dry land into wet' the only engagement on which a Zemindar can rely is an engagement enabling him to irrigate free of separate charge the extent of land which was classed as "wet" at the time of the Permanent Settlement. As regards inams if the assessment was fixed with reference to the capacity of the land to grow an irrigated second crop, the Government cannot demand a second payment when the second crops are grown. A demand by the Government having at its back the powers given by Act II of 1864, must ordinarily amount to a threat of distraint if the money demanded is not paid, and consequently, if payment is made to prevent the execution of that threat, the payment cannot be regarded as voluntary payment within the meaning of S. 69 of the Contract Act.

Mahalakshmamma v. *The Secretary of State for India* .. 823

Highway—*Dedication — Presumption — Restricted dedication — Dedication by Trustee of Hindu temple—Presumption in favour of reservation against Mahomedan procession, with music — Procession not an excessive user of the highway —Ownership in patta lands and non-patta lands*:—Dedication must be presumed from user as a highway, whoever was the owner of the soil at the time of dedication. A general user in the case of a public highway would throw the burden of proving a reservation upon the person contending for it, the presumption being in favour of a dedication without reservation if that be possible. Marching in procession is not an excessive user of a highway. [*Sada gopachari* v. *Krishnaswamy Rao* referred to and declared as overruling the *dicta* of *Bhashyam Aiyangar* and *Subrahmanya Aiyar*, JJ. in *Vijiaraghavachari* v. *Emperor*.] *Obiter* :—Property vested in trustees cannot be presumed to have been

PAGE.

Highway—(*Contd.*)
dedicated as a high-way where such dedication would be contrary to the trust. But where the dedication itself as a highway is established and there is no evidence to show that the trustees (in this case, of a Hindu temple) would have been acting contrary to the trust in dedicating the way to the public without reservation as to procession by the Mahomedans with music, the presumption in favour of a general dedication without reservation is unrebutted. A presumption will arise in favour of a restricted dedication if it be clearly proved that an unrestricted dedication by the trustees is illegal. Question of relative ownership of the Government and the ryot in the soil of pattah lands and non-patta lands dwelt upon.

Vibudapriya Thirthaswamy v. *Esuf Sahib* 879

Hindu Law—Adoption—*General rule as to adoption of a married man—Exceptions—Mayukha—Custom—Jains* :—By the general Hindu law applicable to the twice-born classes, a boy cannot be adopted after his marriage. To this rule, there is an exception in the case of persons governed by the *Mayukha*, and other exceptions have been held to exist by custom. The Agarwala Jains belong to one of the twice-born classes and are governed by the ordinary Hindu law (which is *Mitakshara* law) unless and until a custom to the contrary is established. Their Lordships upheld the finding of the High Court that the evidence in the present case established the custom set up "that among the Jains adoption is no religious ceremony, and under the law or custom there is no restriction of age or marriage among them," but held that the present case, where the evidence regarding the alleged custom was limited to a comparatively small number of centres of Jain population, would make an unsatisfactory precedent if in any future instance fuller evidence should be forthcoming. [30 A. 197 affirmed.]

Rup Chand v. *Jambu Pershad*. 439

———**Adoption—Onus**:—The plaintiff in the case sued to establish his adoption which he alleged took place 20 years before suit. Plaintiff never went into the box to discharge the burden that rested upon him. No account books were produced in proof of the ceremony of adoption. *Held* that, having regard to the improbability and inconsistency of the story told on plaintiff's behalf, his absence in the witness chair and the non-production of all books or documents, especially having regard to the well known and often proved habits of the Indian people with regard to the keeping of accounts recording their most minute transactions, that plaintiff had not discharged the burden that rested in him.

Musammat Lal Kumar v. *Chiranji Lal* 182

Hindu Law—(*Contd.*) PAGE.

———**Adopted son, suit by for declaration**—*Alienation by adoptive mother before adoption* :—The adopted son of a Hindu is entitled to possession of property alienated by his adoptive mother before his adoption only on the widow's death or marriage and a suit by him for a declaration is governed by Art. 125 of the Limitation Act.

Bappamma Venkatasubbarayarow v. *Bappamma Rakumma.*

———**Daughter**—*Liability to perform Shradh of father*—*See* HINDU LAW REVERSIONER .. ..

———**Debt and decree-debt**—*Whether decree-debt can be for family purposes* :—*See* HINDU LAW—JOINT FAMILY .. 303

———**Debts**—*Decree debt personal to the managing member*—*Difference between original debt and decree-debt*—*Liability of other members on decree-debt*—*See* HINDU LAW—JOINT FAMILY. 308

———*Illegitimate son*—*Rights of inheritance*—*Illegal or forbidden intercourse*—*Estoppel of tenant*—*Scope of principle* :—An illegitimate son who is born of a connection forbidden by the customary law governing the parties (*e.g.*, in this case, the connection being with a widow who is not allowed to remarry) has no rights of inheritance to the property of his father. [*Vencatachella Chetty* v. *Parvatham* considered.] Meaning of the phrase "unmarried Sudra woman" examined. The estoppel of a tenant from denying his landlord's title extends only to the person who let him into possession, or to his successor in interest; and consequently if a person entitled to the lands gains possession of the land by collusion with the tenant in possession by getting the tenant to attorn to him, he will get a good title as against all persons but those who let the tenant in possession.

Annayyan v. *Venkata Chetti.* 355

———**Impartible Zemindari**—*Maintenance of junior members*—*Rule*—*Arrears*—*Decree, form of*:—Junior members of an impartible zemindary in Southern India, both according to the practice prevailing in Southern India and the precedents of Courts, have a legal right to maintenance out of the Zemindary property. Ordinarily, the only son of a junior member ought not to be allowed maintenance at the same rate as the father, especially where, as in the present case, the existing head of the family had junior sons of his own who will have to be maintained out of the estate. Their Lordships allowed arrears due during plaintiff's minority at a rate less than the rate of maintenance allowed after plaintiff attained majority. *Held* also that a compromise made in a suit brought by plaintiff's

Hindu Law—(*Contd.*) PAGE.

father for partition did not operate as a release of all claims on behalf of himself and his family for maintenance.

Venkatachella Reddiar v. *Venkatachella Reddiar* 394

———**Inheritance—Illegitimate son**—*Widow—No exclusion of illegitimate son by widow* :—The illegitimate son of a Sudra is not excluded by the widow. *Obiter* :—If the father leaves a widow, daughter or daughter's son, but no male issue, the illegitimate son succeeds as co-heir with the widow, daughter or daughter's son as the case may be, and as sole heir in default of any other heirs down to a daughter's son. [10 M. 334; 15 M. 307, explained.]

Meenakshi Anni v. *Appakutti* 359

———**Inheritance**—*Priority—Mother's sister's son and maternal uncle's son—Mother's sister's son preferential heir—Texts Satatapa—Interpretation* :—The mother's sister's son of a deceased Hidu is entitled to succeed to his estate in preference to his maternal uncle's son. *Obiter* :—Whatever might have been the reason for naming only certain of the bandhus in the text of Satatapa, there can be no implication that they have all priority over others unnamed in the text. But the persons named in the text take in the order in which they are mentioned; and the introduction of the maternal uncle and the sister's son in the list of bandhus so as to effect a breach in the order of persons named is no reason for repudiating the notion of the order amongst the persons named *inter se*.

Appandai Vathyar v. *Bagubali Mudaliar*. 275

———**Joint family—Alienation by co-parcener**—*Stranger purchaser—Suit for partial partition, allowable* :—*See* HINDU LAW—PARTITION SUIT. 323

———*Joint family—Alienation for family purpose—Powers of alienation of a manager, a widow and a father—"Need or necessity," meaning of—Marriage a necessary Samskara and a family purpose—Alienation for marriage of co-parcener valid—Marriage among Sudras*:—Among Sudras, marriage is an initiatory ceremony or Samskara and perhaps the most important of Samskaras performed by them; and consequently a loan contracted for the marriage of a co-parcener in a joint Hindu family of Sudras is for a family purpose and, therefore, binding on the other members. *Obiter* :—Marriage is an obligatory Samskara in the case of every Hindu, to whatever caste he may belong, unless, in the case of a twice born, he be a *Naishtika Brahmacharin* [*Govindarazulu Narasimham* v. *Devarabhotla Venkatanarasayya* (I. L. R. 27 M. 206) not followed.] Observations in *Ponnappa Pillai* v. *Pappuvayyangar* (I. L. R. 4 M. 1 at p. 20) dissented from]. Meaning of the phrase "family

Hindu Law—(*Contd.*) PAGE.

necessity" explained. "The need or the reasonably credited necessity" spoken of in *Hanuman Persaud's case* (6 M. I. A. at p. 393) only means a legitimate family purpose. A manager of a Hindu joint family can alienate property for a legitimate family purpose. A widow in possession can charge the estate so as to bind the reversioners for the same purpose, and for the performance of religious ceremonies or pilgrimages for the benefit of her husband's soul. A Hindu father can alienate it for discharging an antecedent debt, and in the absence of an antecedent debt for a "family purpose."

Kameswara Sastry v. *Veeracharlu* 855

——— **Joint family—Manager—Alienation by**—*Assent of other members when a cure—Subsequent ratification, effect of—Alienation whether void or voidable* :—The manager of a joint Hindu family exercising the powers of a manager is not the agent of the family in the strict sense of the term. [*Annamala Chetty* v. *Murugesa Chetty* (I. L. R. 26 M. 544) referred to.] A manager can alienate joint family property for a family purpose or a justifiable family necessity. He can also alienate property with the assent of all the other members given at the time of the alienation, as such assent cures the incapacity of the manager, and it is not necessary, to validate the alienation, that the assenting members should join in the alienation. But an alienation by the manager for no family purpose or necessity and made without the assent of the others is void and a subsequent ratification by the other members cannot validate it. An assent by some alone, even at the time of the transfer, though evidence of the propriety of the alienation, will not, in the face of positive proof of its impropriety, suffice to pass their interests, for such assent does not pass their interest. *Obiter*:—There can be no ratification where the agent does not purport to act on behalf of the principal.

Kandasami Asari v. *Somaskanta Ela Nidhi* 371

——— *Joint family property—Confiscation—Government grant of a part of the property to one member of the family—Whether the estate comprised in the grant was joint or separate—Separation of one member of the joint family—His subsequent claim to a share of the joint property—Partition*:—Before the annexation of Oudh certain estates belonged to an undivided Hindu family consisting of three brothers, *G.*, *U.* and *R.*, of whom *G.*, the eldest, was the manager. The estates were confiscated, but the Government made *G.* a grant of the estate in suit. *G.*, when examined with a view to the preparation of the khewat of the estate, stated that he and his brothers were "joint in equal shares." The khewat, which was signed by the three brothers

Hindu Law—(*Contd.*) PAGE.

and countersigned by the presiding officer, gave under the heads "Shares of Proprietors" and "Names of Zamindars," the names of the three brothers "all three in equal shares." *G.* never disputed the right and title of his brothers to a joint share in the property; *Held,* that it must be inferred that under a family arrangement, which could not now be questioned, the three brothers became jointly entitled as members of an undivided Hindu family to the estate in suit, although the Government grant was to *G.* alone. The three brothers continued to live jointly until 1867, when *U* quarreled with *G.*, left the family home, and brought a suit for partition. *R.* too, brought a similar suit, claiming one-third of the estate, but he remained with *G*, and withdrew his claim. *G.*, died in 1869. *U.*, then, made *G*'s widow a defendant and a decree was made by consent giving *U.* one-third of the estate. *R.* made an arrangement with *G*'s widow, who executed a will in his favour; that she was to remain in possession, and that his rights were to be in abeyance during her life. On the death of *G*'s widow in 1896, *U.* claimed one-half or in the alternative one-fourth share of the two-thirds of the estate that was in her possession during her life. *Held,* on the evidence, that *U.* had altogether failed to prove that *G* died entitled to either two thirds of the estate as separate property; and that *R.* remained with *G.* till the latter's death and then became entitled to two-thirds of the estate.

Kedar Nath v. *Ratan Singh* 903

———*Joint family—Suit by Manager—No presumption of representative capacity*:—There is no presumption of law that a suit by a manager of a joint Hindu family is in his representative capacity as Manager; and where the question itself is not raised as to his having represented the family, a Court will be acting rightly in holding that he sued in his own personal capacity.

Rangasawmi Iyengar v. *Annathurai Iyengar* 852

———*Maintenance— Illegitimate sons—Adulterous offspring—Claim against deceased father's undivided brothers*:—The illegitimate son of a Sudra, though the offspring of an adulterous intercourse, is entitled to maintenance from the undivided brothers of his deceased father who take the father's estate by survivorship. *Obiter*:—Intercourse with a married woman is not always a crime, and there is no warrant in Hindu Law for refusing maintenance to offsprings by adulterous intercourse on the ground of their criminal origin.

Subramanya Mudali v. *Velu* 350

———**Marriage— Sudras**—*Kaikkolar caste in Tinnevelly—Reversion of bride from Christianity to Hinduism and marriage*

Hindu Law—(*Contd.*) PAGE.

—*Validity*:—A woman born of Christian parents and belonging to the Kaikkolar (weaver) class in the District of Tinnevelly was treated at the time of marriage as a Hindu and married according to the Hindu form of marriage to a Hindu Kaikkolar. The husband and wife lived together for 30 or 40 years and were treated by the castemen as members of the caste. *Held* on the question of the validity of the marriage :—(1) That the marriage was in conformity with the custom obtaining in the caste and was therefore valid. (2) That it was valid by reason of its being in conformity with the Hindu Law which does not prohibit marriages between any persons who are not Dvijas, *i.e.*, of the twice born classes. (3) That it was also valid because of the recognition of its validity by the members of the caste. The term "Sudra" includes all but those of the twice born classes among Sudras. If by caste usage any form other than those sanctioned by Hindu Law is considered as constituting a marriage, then the adoption of that form under the conditions prescribed by the caste with the intention of thereby completing the marriage union is sufficient to impart validity to the marriage. Castes and their formation discussed. Where a caste accept a marriage as valid and treat the parties as members of the caste, it would be an unjustifiable interference for the Courts to declare those marriages null and void. But if the marriage is valid under the ordinary Hindu Law its validity is not affected by its being opposed to the rules of the caste or community of the parties.

Muthusawmi Mudaliar v. *Masilamani Mudaliar* 49

———**Mutt**—*Head of Mutt—Property acquired by—Ownership in—Management of charity properties—Division of*:—Where the heads of a mutt are married people and are competent to acquire property for themselves and their descendants, including the female members of their family, there is no presumption that properties acquired by them were acquired for the office of mutt and not for their own use and benefit. The right of management of properties devoted to charitable and religious uses ordinarily descends to the natural heirs of the donee, [*Ramanathen Chetti* v. *Murugappa Chetti* (I. L. R. 27 M, 192), *Thandavaraya Pillai* v. *Shunmugam Pillai* (I. L. R. 32 M. 167) referred to and approved] and in the case of a divided Hindu family, the usage and custom generally is that along with the other properties the office of manager of the charity properties is also divided in the sense that it is agreed to be discharged in rotation by each member or branch of the family, the duration of their turns being proportionate to their shares in the family property.

Sethurama Swamiar v. *Meruswamiar* 108

Hindu Law—(*Contd.*) PAGE.

———*Partition—Partial partition—Right of suit for partial partition by alience of share of co-parcener in certain items already alienated by others*:—When certain items of family properties are conveyed by one of two co-parceners of a Hindu family to a stranger for purposes not binding on the family, the alienee from the other co-parcener of his share in the said properties may, without instituting a general suit for partition of the entire family property, maintain an action for the partition of his share in the said items.

Iburamsa Rowthan v. *Thiruvenkatasami Naick* 743

———**Partition suit**—*Partial partition, suit for, by stranger purchaser*:—*Held* also that a purchaser of the share of one of several co-sharers in a plot of land is entitled to bring a suit for partition of that plot of land alone without seeking for a general partition of all the lands belonging in common to the vendor and his sharers. [*Ramasami Chetti* v. *Alagirisami Chetti* (29 M. 361) commented on. S. A. 175 of 1905 dist.]

Harikishna Chowdhury v. *Lakshminarayana* 323

———*Reversioner—Alienation by daughter, life estate holder, for spiritual benefit of father, last male holder—Pushkaram festival—Daughter bound to perform shradh*:—A gift by a daughter, who has inherited her father's property, of a small portion thereof for the spiritual benefit of her father cannot be impeached by the reversioner if the occasion of the disposition or expenditure is reasonable and proper according to the common notions of the Hindus. A daughter taking the property of her father should perform the *shradh* of her father. The gift or expenditure should have reference to the spiritual needs of the father or husband whose property is taken. The gift of land is a suitable appendage to a shradh ceremonial and is highly meritorious. *Obiter*:—The daughter inheriting the property from her father is not entitled to expend it for the spiritual needs of her husband, though it cannot be said that under no circumstances can the father's property be so used. *Held* that a gift by a daughter of 49 cents of land out of 19 acres inherited by her from her father on the occasion of the *Pushkaram* at Rajahmundry was good, and binding on the reversioners.

Veeranna v. *Ramakrishmamma* 789

———**Reversioner's suit**—*Suit for declaration of invalidity of alienation—Decree in favour of reversioner—Death of plaintiff reversioner pending appeal—Abatement*:—A reversioner brought a suit for possession of properties and in the alternative for a declaration that certain alienations by the widow will not bind the reversion. The lower Courts declared the alienations invalid and gave a decree for possession. The plaintiff rever-

PAGE.

Hindu Law—(*Contd.*)

sioner died pending appeal by defendant: *Held*, that the suit for the declaration did not abate, the suit being on behalf of all the reversioners.

Muthuswami Mudaliar v. *Masilamani* 49

———**Widow—Compromise by relinquishing rights disputed—Effect of—No alienation** :—*See* LIMITATION ACT, ART. 144. 204

———**Widow—Debts incurred by—Binding character of:** —It is not necessary that a Hindu widow should create a charge on the estate in respect of a debt incurred by her for necessary purposes binding on the estate in order that the debt may be binding on the estate. It is enough if the creditor lends to her as representative of the estate for a necessary purpose binding on the estate. [*Ramasami* v. *Sellathammal* (4 M. 375) commented on].

Reyelle Jogayya v. *Venkataratnamma* 412

Inconsistent pleadings :—*See* PRACTICE—PLEADINGS .. 14

Injunction, no consequential relief:—*See* SPECIFIC RELIEF ACT, S. 42. 302

———**a discretionary relief and not a consequential relief**:—*See* SPECIFIC RELIEF ACT, S. 42 302

Insolvency Act, 11 and 12 Vict, C. 21—*High Court's jurisdiction under it—Punjab Laws Act* (*IV of* 1872)—*Insolvency jurisdiction under it—S.* 24 *of Act IV of* 1872—*Power of the Court under it—Order of a Court in the Punjab declaring debtors insolvent—Effect of such an order—Civil Procedure Code* (*Act XIV of* 1882) *Ch.* 20—*Receiver—Transfer of debtor's property—Subsequent order of the High Court adjudicating the debtors insolvent—Vesting order made by the High Court—Its effect on the debtor's estate—Official Assignee*:—The imperial Act, the Indian Insolvent Act (11 and 12 Vict..C. 21), of Parliament conferred upon what are now the High Courts in the Presidency towns in India, jurisdsction for insolvency purpose, extending over the whole of India, and for many purposes, over much wider limits. The system of insolvency created under the Punjab Laws Act (IV of 1872) in a series of sections beginning with S. 22, was effective only within the Punjab. The Insolvent Court at Amritsar, in the Punjab in the presence of four out of the five members of a debtor firm, made an order declaring them insolvent, and requiring them to furnish security and to put in lists of property, creditors and debtors. Subsequently the High Court of Bombay in its insolvency jurisdiction made an order adjudicating all the members of the said firm insolvent under 11 and 12 Vict., C. 21, and at the same time, a vesting order, vesting the property of the debtors in the Official Assi-

Insolvency Act—(*Contd.*) PAGE

gnee of Bombay. *Held*—that the Civil Procedure Code (Act XIV of 1882), Chapter 20 had no application and that the property of the debtors in the Punjab had not vested in the Receiver appointed by the Court at Amritsar. *Held*, also, that under the insolvency system established by 11 and 12 Vict., C. 21, the High Court, unimpeded by any other Court, could effectually administer the estate of the insolvents, including that in the Punjab and when an adjudication was made by the High Court, the estate of the debtors vested in the Official Assignee, and he was to administer it. *Held*, finally, that under the Punjab Laws Act (IV of 1872), S. 24, on which the power of the Court at Amritsar depended, what was entrusted to that Court was merely administration; that under that Act no transfer of property took place; and that the property of the debtors in the Punjab had not vested in the Courts so as to exclude the operation of the Bombay vesting order.

Official Assignee, Bombay v. *Registrar, Small Cause Court, Amritsar.*—[SIR ARTHUR WILSON]. ... 433

Island, *Ownership in—Crown, rights of:—See* CROWN. 66

Joint tenancy—*Principle of—Applicability to gifts by Native Christians:—See*—SUCCESSION ACT, S. 93 (*Ill.*) 377

———**in Malabar Law**—No:—*See* MALABAR LAW. .. 268

Jurisdiction of District Magistrate to direct further inquiry by Subordinate Magistrate in cases falling under S. 195, Cr. P. C.:—*See* Cr.P.C., S. 428. 102

———**of High Court over scheme suit in moffusal temple** :—*See* C. P. C., S. 92 387

———**original of the High Court**—*Presumption against extension of original jurisdiction—Statute — Construction* :—*See* C.P.C., S. 92 387

Katlai manager—*Suit for share in tasdik against temple trustee—Limitation* :—*See* LIMITATION ACT, ART, 10 374

Landlord and tenant—*Distraint, law of—English and Indian law—Difference between* :—*See* MADRAS RENT RECOVERY ACT..

Landlord and tenant—*Ejectment of occupancy ryot—Onus* :—There is no presumption in favour of an inamdar's title to eject an occupancy ryot in a zemindari, and the plaintiff, whoever it be, whether the inam be whithin a Zemindari or outside it, should make out his title to eject the occupancy ryot.

Yerrayya v. *Kangali Naidu* 764

Ejectment suit—Plea of want of notice to quit—*Denial of landlord's title in written statement, when entails a forfeiture of right to notice* :—In a suit in ejectment, the defendants pleaded want of notice to quit and also title in themselves by reason of their purchase before suit from a third person to whom they alleged the lands belonged in jenm right.—*Held* :—That the allegation in the written statement of the purchase

Landlord ejectment suit—(*Contd.*) PAGE

before suit was evidence of the purchase before suit as well as of a denial of title before suit; and, consequently, the plea of want of notice to quit was not valid.

Kathijakutti Umma v. *Kuthussa* 415

———**Estoppel of tenant**—*Scope of principle*:—*See* EVIDENCE ACT, S. 116 355

———*Liability for rent when and how attaches—Person liable—Assignor and assignee—Madras Rent Law*:—*See* MADRAS RENT RECOVERY ACT 732

———*Occupancy right—Stipulation not to touch the land without obtaining a cowle for the next fasli—Ejectment suit—Onus*:—In an ejectment suit by an inamdar the onus is on the plaintiff to prove his title to eject. A stipulation by the ryot that he will not touch the land without obtaining a fresh cowle from the landlord is merely an undertaking on his part that he will not commence to cultivate it in the next year without first obtaining a cowle, and is perfectly consistent with right of occupancy.

Subbaraya Sastri v. *Kristnaiya* 526

———*Relief against forfeiture when period of grace allowed*:—Courts will not relieve against forfeiture for non-payment of rent after the period of grace allowed in the lease.

Adhiragi Chetty v *Billa Tyampu* 944

———*Sale of holding without notice to assignee from puttadar invalid*:—The landlord is bound to find out who holds the tenant's interest and proceed against him for the rent in arrear, and in the absence of any notice of the arear or of the attachment, to the assignee from the holder of the pattah, the assignee's interest will not pass by a sale thereon

Peram Narasigadu v. *Machiredi Buchireddi* 732

———*Surrender—Partnership in respect of leasehold interest—Endorsement by landlord—Registration, necessity for—Forfeiture—Tenant's acquiescence—Limitation Act, Arts.* 110, 112, 115 *—Suits for rent—Liability of assignee to suits for rent*:—Per *Abdur Rahim* J. (*Munro* J. *contra*):—The acceptance by a landlord of rent from a person who acquired an interest in the lease under an agreement with the tenant, though with the landlord's assent, does not by itself operate as a surrender of the lease. Per *Abdur Rahim* J.—The onus is on the person who objects to a deed for want of registration to shew that the writing is required by law to be registered. A contract of partnership in respect of a lease-hold interest does not require registration, and a person who enters into a contract of partnership with a tenant and enters into possession and enjoyment of the leased property is liable to the landlord for the rent. An endorsement by the landlord evidencing his assent to the assignment by the lessee of an interest does not create an intrest in immoveable property and requires no registration. Though it is not necessary that the tenant should assent to the act of forfeiture

by the landlord, yet the question of the tenant's acquiescence or otherwise has a bearing on the landlord's right of forfeiture, and the landlord can waive his act of forfeiture if the tenant has not assented to it. Art. 110 of the Limitation Act is applicable to suits for rent generally, but Art. 116 specially provides for a suit based on a contract in writing including a lease; and the period of limitation is the same in respect of an assignee from the registered lessee, the covenant for rent being one which runs with the land. *Obiter* :—The liability for rent of an assignee of a term arises out of privity of estate existing between him and the lessee, and his liability ceases on the termination of such privity as by relinquishment of possession or transfer. Any agreement between the lessee and his assignee who enters into partnership with the lessee in respect of the lease, as regards the share of each in the profits and losses, cannot bind the landlord and would not affect his rights upon the covenants in the lease. Per *Munro* J.:—S. 112 of the Transfer of Property Act regarding waiver of forfeiture has no application to a case where the landlord has already taken advantage of the forfeiture and determined the lease. *Held also* :—That the landlord was entitled in the case to recover as for use and occupation and that Art. 115 of the Limitation Act applied to the case.

Chengiah v. *Kalahasti Zemindari* 555

Lease—Essentials of :—*See* T. P. A., S. 105. 298

Legal Practitioners Act, S. 13 (f)—"*Other reasonable cause," meaning and scope of—Ejusdem generis—Association with fraudulent companies* :—S. 13 (*f*) of the Legal Practitioners Act is not confined to professional misconduct only, but includes any dishonest or dishonorable conduct whether or not in the discharge of professional duty. The association of Pleaders as President or Directors in so-called Provident Companies, which have no substantial basis to work upon but are a fraud on the public, is a reasonable cause within the meaning of S. 13, Cl. (*f*).

In re two Second Grade Pleaders 500

Letters Patent, Cl. 12—"*Suit for land*"—*Suit for maintenance charging it on specific property* :—A suit which prays for any relief with reference to any specific property is a suit for land; and consequently a suit for maintenance praying that it may be made a charge on specific immoveable property is a "suit for land" within the meaning of Cl. 12 of the Letters Patent. *Obiter* :—But where in a suit for maintenance the plaintiff only prays for a decree charging her maintenance on ancestral property generally, without specifying any particular portion thereof, the suit may not be a suit for land.

Sundara Bai v. *Tirumala Rao* 103

PAGE

Limitation, a rule of procedure :—*See* LIMITATION ACT, S. 30 347

———**Adverse possession against one of two joint trustees**—*Bar against the other*:—*Held*, that if the right of one of two joint trustees to recover the trusteeship and the trust properties from a third person holding them adversely becomes barred by limitation, the right of the other joint trustee becomes likewise barred although the latter sues within three years of his attaining majority.

Thiagaraja v. *Rathnasabapathi Pillai* 421

———**Adverse possession** — *Religious endowment—Suit to recover possession—Property of the idol—Mohant—Senior and Junior Chelas—Disputed right of succession—Ekrarnamah embodying terms of settlement—Construction—Respective rights of the two Chelas*:—The plaintiff, as Mohant of the Mutt or Temple of a Hindu Deity at Bhadrak, sued, on the 17th July, 1901, to recover possession of certain properties situate at Bibisarai, alleging that the properties were debottar property, dedicated to the worship and service of the plaintiff's Thakur, and held by the defendant as an Adhikari in charge of a subordinate Mutt at Bibisarai. A controversy, which arose on the death of a former Mohant, who died leaving two Chelas, as to the right, of succession to the two Mutts and the property annexed to them was settled by an arrangement embodied in an Ekrarnama, dated the 3rd November, 1874, executed by the senior Chela in favour of the junior Chela, described as Adhikari, by which the Mutt at Bhadrak, was allotted in perpetuity to the elder Chela and his successors, while the Mutt at Bibisarai and the properties annexed to it, were allotted to the younger Chela and his successors, for the purposes connected with his Mutt, subject to a small annual payment towards the expenses of the Bhadrak mutt. The parties to the suit stood in the place of the elder and younger Chelas respectively :—*Held* (affirming the decision of the High Court) that in point of law, the property dealt with by the Ekrarnama was, prior to its date to be regarded as vested not in the Mohant but in the legal entity, the Idol, the Mahant being only his representative and manager ; that from the date of the Ekrarnama the possession of the junior Chela, by virtue of the terms of that Ekrarnama, was adverse to the right of the Idol and of the senior Chela as representing that Idol ; and that the suit was barred by limitation.

Damodar Das v. *Lakhan Das* 624

Limitation Act, S. 10, Arts. 12, 131—*Suit for specific share of Tasdik—Suit by Katlai Manager against temple trustee—Relative positions of*:—The plaintiffs, as managers of a katlai, sued the temple trustee for recovery of a sepecific share of the tasdik amount received by the latter from Government for

Limitation Act—(*Contd.*) PAGE

eleven odd years before suit, the same having been allotted for the purpose of the katlai. *Held* :—(1) That there was nothing in the case to support the view that the trustee acted as agent of the katlai manager in so receiving the amount. (2) That it was reasonable to presume that the temple trustees were appointed trustees for the receipt of the katlai amount. (3) That S. 10 of the Limitation Act governed the case and not Article 62 or 131 and that arrears were recoverable for the whole period of eleven years odd.

Appa Mudaliar v. *Rama Subbier* 374

———**S. 12**—*Scope and effect of-Statute—Construction—Madras Acts—Forest Act V of* 1882—*Appeals—Applicability of S.* 12 *to appeals under Forest Act.*—Per *Curiam.*—S. 12 of the Limitation Act providing for deduction of time occupied in obtaining a copy of the order is not applicable to appeals under S. 10 of the Forest Act V of 1882. Per *Chief Justice* :—The effect of S. 6 of the Limitation Act in the case of a special and local enactment such as the Madras Forest Act is to exclude the application of S. 12 of the Limitation Act in the case of appeals thereunder. S. 12 of the Limitation Act must be read with S. 4 and is one of the provisions to which S. 4 which in terms applies the periods prescribed in the 2nd schedule, is subject. The extension of time provided for by S. 12 of the Limitation Act in the computation of the period of limitation for appeals does not apply to appeals under special enactments where those enactments do not require that notice of appeal should be accompanied by a copy of the order appealed against.

Abu Bucker v. *The Secretary of State* 283

———**S. 19**—*Acknowledgement by Court of Wards or by the Collector as its agent—Madras Court of Wards Regulation V of* 1804, Ss. 17, 32.—The Court of Wards, either by itself or through its agent, the Collector, has the power to make an acknowledgement of a debt so as to bind the ward, and give a new starting point for limitation; and Ss. 17 and 32 of Regulation V of 1804 do not restrict the power of the Collector to give an acknowledgment.

Linga Reddi v. *Sarvarayudu* 808

———**S. 22**—*Suit for partition* :—*See* DEED—CONSTRUCTION .. 79

———**S. 30, Art. 177**—*Second appeal—Application to bring in legal representative—Limitation, rule of procedure—General Clauses Act, S. 6—Co-uralans, suit against—Appeal abating against one abates against all—Parties* :—S. 30 of the Limitation Act does not apply to applications, and an application put in after Act IX of 1908 came into force for bringing in the legal representative of a respondent in a second appeal who died six months before the date of application is barred by Art. 177 of Act IX of 1908. Limitation is not a rule of substantive law; and

Limitation Act—(*Contd.*) PAGE

S. 6 of the General Clauses Act has no application to a curtailment of the period of limitation by a new Act. Co-uralans are joint trustees of the temple and its properties, and it is not open to a person to present an appeal against some only of the co-uralans, who had obtained an injunction decree against the appellant ; and consequently, a second appeal which abates against one respondent becomes unsustainable against all.

Kali Amma v. *Palappakkara Manakal* 347

———**Art. 12**—*See* LIMITATION ACT, S. 10.

———**(XV of 1877) Art. 36, 98**—*General Estate—Joint family property of Hindu father after his death not general estate—Principal and surety—Forbearance to sue—Principal—Debt barred against principal—Surety yet liable—Contract Act, S.* 134 :— The joint family property of a Hindu father and his sons which has passed by survivorship to the sons on the father's death, is not "the general estate" of the deceased father within the meaning of Art. 98 of the Limitation Act. A suit barred against the father by Art. 36 of the Limitation Act is barred against the sons as well. Whenever personal actions are barred, the rights themselves are not extinguished. A mere forbearance to sue the principal and allowing the right of action against him to be barred by limitation do not discharge the surety.

Subramania Aiyar v. *Gopala Aiyar* 633

———**Art. 49.**—*Suit by depositor for return of deposit—Demand and refusal—Art.* 49 *not appllicable* :—*See* LIMITATION ACT, ART. 145. 41

See also LIMITATION ACT 374

———**Arts. 61, 83, 116, 120**—*Suit by Agent against Principal for refund of money spent—Starting point—" Contract "—Legal obligation to indemnify—No contract* —The legal obligation of a principal to indemnify his agent under S. 222 of the Contract Act is not a "contract" to indemnify within the meaning of Art. 83 of the Limitation Act; nor is a suit for recovery of money paid by the agent for the principal governed by Art. 116 of the Limitation Act when the instrument evidencing the agency is registered in the absence of any contract in the instrument. In a suit by the agent for recovery of money paid by him for the principal in meeting the expenses of the principal, litigation is governed by Art. 61.

Kandaswami Pillai v. *Avayambal* 989

———**Art. 110—Arrears of rent,** *Meaning of—Civil litigation pending—Attachment for more than the amount actually due* :— So long as proceedings are pending before Civil Courts, the rate of rent is in suspense and therefore no arrears can be said to have been due within the meaning of the Limitation Act. An attachment for an amount larger than what is due is valid for

Limitation Act—(*Contd.*) PAGE

the amount actually due, though in the case of sale it may be totally bad.

Venkatakrishna Pillai v. *Muthialu Reddy* 821

———**Art. 110—Ascertained rent**—*Suit for enforcement of acceptance of patta—Decision by High Court declaring terms of patta rather permanently in a prior regular suit by tenant—Termination of summary suits*:—A landholder tendered patta for Fasli 1311 on the last day of the fasli; and on the tenant's refusal to accept it instituted a summary suit for enforcement of acceptance of patta. During the pendency of the summary proceedings the High Court declared, on 7th August 1902, the terms of the patta in certain regular proceedings instituted by the tenants, subject of course to variation if circumstances justifying it arise. The summary suits were disposed of finally and formally in terms of the High Court judgment only on 24th May 1904. The present suits were instituted just on the date of the expiry of the three years period from 24th May 1904. *Held*:—That the rent for Fasli 1311 in respect of which summary proceedings were pending became ascertained only on the date of the formal determination of the summary suits and not on the date of the High Court judgment. [*Rangayya Appa Row* v. *Bobba Sriramulu* I.L.R. 27 M. 143 followed. *Arunachalla Chettiar* v. *Kadir Rowther*, I. L. R. 29 M. 556 distinguished.]

Singaram v. *Gulam Ghouse* 927

———**Arts. 110, 112, 115—Rent suit**—*Liability of assignee to suits for rent*:—*See* LANDLORD AND TENANT. 555

———**(XV of 1877) Art. 120—Applicability**—*Suit for declaration that sale and redemption of share not binding—Payment to one of several co-mortgagees—Validity of—Specific Relief Act (I of 1877), S. 42—Applicability of—Possession not capable—Consequential relief—Division, complete—Presumption of—Plea taken in second appeal*:—A suit for a declaration that the sale of one pangu of Melwaram right and redemption of another pangu of Melwaram right are not binding on the plaintiffs is governed by Art. 120 of the Second Schedule to the Limitation Act (XV of 1877). Where defendants are not in possession, the plaintiff is not entitled to further relief in the nature of possession, and his suit for a declaration of his right is not barred by S. 42 of the Specific Relief Act. Where property is in the possession of Kudivaramdars and the Melwaram is enjoyed by periodical division of the produce, it does not necessarily follow that the owners of the Melwaram must pray for a further physical division of the property by metes and bounds. An objection to the suit on the ground of bar by reason of S. 42 of the Specific Relief Act was not allowed to be raised for the first time in second appeal in the case before their Lordships. Where division is admitted, the presumption of law is that it is complete. Where

Limitation Act—(*Contd.*) PAGE

a mortgage is taken by *A* on behalf of his undivided family and on *A*'s death, the mortgagor pays the entire mortgage money to one of the divided members of *A*'s family, such payment is not a valid discharge of the entire mortgage so as to affect the others having several interests in it. [*Barber Maran* v. *Ramana Goundan* (I.L.R. 20 M. 461) dissented from. *Ahinsa Bibi* v. *Abdul Kader Sahib*. (I.L.R. 25 M. 26); *Sitaram* v. *Shridhar*(I.L.R. 27 B. 293) approved. *Steeds* v. *Steeds* (1889) 22 Q. B. D. 537; *Powell* v. *Broadhurst* (1901) 2 Ch. 160; *Wallace* v. *Kelsall*, 55 R. R. 707, referred to.]

Ramasami v. *Muniyandi*. 709

Limitation Act, Arts. 120, 144—*Suit for partition of immoveables and moveables*—Art. 120 is not applicable to a suit by the heir of a deceased Mahomedan for the share of the deceased's estate where the subject matter consists of immoveables. The suit in so far as it relates to immoveables is governed by Art. 144 of the Limitation Act and the fact that he plaintiff has with held the moveables for over six years and that, consequently, his right to a share in the immoveables may be affected does not affect the matter. [*Mahomed Raisat Ali* v. *Hasin Banu* (I. L. R. 21 C. 152) and *Punchordas* v. *Parvati Bai* (I. L. R. 23 B. 725) referred to.] 964

———**Arts. 123, 120, 144**—*Mahomedan Law—Suit by Mahomedan sharer for share of deceased's property after* 12 *years—Art.* 123, *scope of*:—A suit by a Mahomedan for a share of his wifes property in the possession of another sharer more than 12 years after his wifes death is governed by Art. 144 in the case of immoveables and by Art. 120 in the case of moveables. Art. 123 applies only when the suit is for a share of an estate which it is the legal duty of the defendant to distribute and does not apply to the case of a Mahomedan dying intestate, and the estate in that case is at once vested in the heirs as tenants in common, and their is no one charged by law with its distribution.

Khadersa Hajee Bappu v. *Ayissa Ummah*... 238

———**Art. 124, applicability of**—*Adverse possession of profits alone without the office—Plaintiff entitled to beneficial enjoyment of property—Starting point*:—Art. 124 applies only when the suit is one against the holder of the office. Possession of the lands alone does not constitute "possession of the office" within the meaning of Art. 124. Where the plaintiff is entitled to the beneficial enjoyment of the lands attached to a trust, time beigns to run for a suit to recover the property only from the time when his right to the benefici al enjoyment thereof accrues. The decision in *Gnana Sambanda Pandaram* v. *Velu Pandaram* I.LR. 23 M. 271 has not over-ruled that in *Mahomed* v. *Ganapati* I.L.R. 13 M. 277 in this respect.

Kamalathammal v. *Krishna Pillai*. 781

PAGE

Limitation Act—Art, 127—"*Exclusion*"—*Mere non-participation, no exclusion*:—Mere non-participation is not exclusion within the meaning of Art. 127 of the Limitation Act.
Sammantha Gramany v. *Devisikamani Gramany*.... .. 436

———**Art. 131**—*Suit for specific share of Tastik—Suit by katlai manager against temple trustee—Relative positions of*:—*See* LIMITATION ACT, S. 10. 374

———**Art. 139**—*Adverse possession—Lease for definite period—Holding over—Starting point*:—Where a lease is for a definite period, and not one from year to year, limitation begins to run against the lessor on the termination of the lease.
Sangila v. *Maruthamuthu* 131

———**Art. 142—Onus**:—In a case governed by Art. 142 of the Limitation Act, the onus is on the plaintiff to show dispossession within 12 years before suit.
Venkatarayudu v. *Sankarayya* 306

———**Art. 144**—*Adverse possession—Hindu Law—Widow—Compromise by relinquishing rights disputed—Effect of—No alienation*:—Plaintiff's father brought a suit against first defendant's father for a third share in the plaint Zemindari, obtained a decree and died before division was carried out in execution. Plaintiff's mother was brought on record as the father's legal representative, but her right to execute was contested. The District Court and the High Court decided in her favour, but leave to appeal to the Privy Council was obtained by 1st defendant's father and stay of execution applied for. Plaintiff's mother and defendant's father compromised the dispute, by which plaintiff and her heirs were to relinquish all their rights under the decree for a consideration. Plaintiff on attaining majority brought this suit for a declaration that the "alienation" by her mother was invalid and inoperative beyond her mother's lifetime and for recovery of a third share of the Zemindari. *Held*: That there was no transfer of right by the compromise and that the compromise did not effect an alienation by the mother of rights which she possessed so as to make the possession of the 1st defendant's father a possession derived from her; and that the suit was barred by limitation, as the defendant and his father had been in possession adverse to the plaintiff and her father for over twelve years, no possession having been obtained by plaintiff's father under the decree obtained by him.
Timmaji Amma v. *Javvajee Subbaraju* 204

———**Art. 144**—*Onus—Partition—Suit for partial partition—Stranger-purchaser—Hindu Law*:—Under Art. 144, it is incumbent upon the person setting up the bar by limitation to prove that the other party or his predecessor in title was excluded from the enjoyment of suit land in denial of his title.
Hari Kistna Chowdury v. *Lakshmi Naryaana Pantulu*. ... 32

Limitation Act—(*Contd*·) PAGE

———**Arts. 145, 49**—*Suit by depositor for return of deposit—Demand and refusal.*—In a case of deposit of moveable property, whether there has been a demand and refusal or not, a suit for its recovery falls within Art. 145, and Art. 49 is not applicable. *Obiter*:—A deposit is a gratuitous bailment, and the bailee or depositee is bound to return a mere deposit for safe custody at any time irrespective of the time specified in the contract. [*Obiter* in *Ramakrishna Reddy* v. *Panaya Goundan*. (M. L. J. 51) not followed.]

Gangineni Kondaya v. *Kondappa Naidu* 41

———**Art. 149**—*Adverse possession against the Crown—Gramanattam—Onus*:—The bare classification of lands as gramanattam by the revenue officials will constitute at the most an assertion of title and nothing more. In a suit against the Crown for recovery of possession of lands, claimed by the Crown, if the plaintiff proves long possession on his part (*e.g.*, as in this case, twenty and forty years in respect of the suit items) even though the proof does not extend to sixty years, it is upon the Crown to prove that it had possession within the statutory period, and in the absence of such proof, the plaintiff is entitled to a declaration that he is the sole owner. [(19 M. 165) *Secretary of State* v. *Kota Bapanammagaru* ; (22 M. 100) *Muthaya Chetty* v. *Secretary of State*; (25 B. 287) *Hanumanth Rao* v. *Secretary of State*; (36 C. 1) *Haidar Khan* v. *Secretary of State for India*; (20 B. 798) *Gangaram* v. *Secretary of State referred to.* (13 M.L.J. 269) *Katti Mahammed Mira* v. *Secretary of State* distinguished.]

Krishna Aiyar v. *The Secretary of State for India* .. 71

———**Art. 149**—*Limitation against the Crown—Onus*:—*See* CROWN 66

———**Art. 149**—*Proof of possession for* 30 *or* 40 *years—Onus, shifting of—Mirasidars' claim to a village tank in the Tanjore District*:—Possession for 30 or 40 years in sufficient to shift the onus on Government of showing that they have been in possession at some time within 60 years prior to suit. *Held* also on the evidence that the plaintiffs, Ekabogam (sole) Mirasidars of a village in the Tanjore District, have established their ownership of a tank and its banks in the village (the tank being one used for drinking and bathing purposes) as against Government.

Venkatrama Aiyar v. *Secretary of State* 74

Lunacy—*Effect on vested rights — Uralan*:—Lunacy does not divest the estate already vested or the right of management, though it may be a ground for the removal of a lunatic from the office of trustee which is hereditary. Consequently, an *Uralan*, if a lunatic, does not *ipso facto* cease to be an Uralan so as to allow the next in succession to step in.

Nilakandan v. *Sankaran* 949

PAGE

Madras Acts—Abkari Act, S. 13—*Partnership of unlicensed person with a licensed one* :—S. 13 of the Madras Abkari Act does not prohibit a person having no license from holding an interest in the manufacture or vend of liquor jointly with a licensed manufacturer or vendor. [*Marudamuthu Pillai* v. *Rangasami Moopan.* I. L. R. 24 M. 401 distinguished.]

Natla Bapiraju v. *Achuta Rajaju* 317

Madras Cess (Water) Act VII of 1865, S. 1—*User—Liability for assessment—Essentials—Jurisdiction of Civil Courts—Collector's authority*:—In order to make a person liable for payment of water cess under S. 1 of Madras Act VII of 1865, the essential requisite is that the water used should be water from a Government source irrespective of the ownership of the land through which it passes; and it is not necessary for the creation of the liability that the person using it should have the option to refuse it. Nor is it necessary that the whole of the water used should be from a Government source. All that the section requires is (1) that water from a Government source should irrigate the land in question and (2) in the opinion of the Collector "the irrigation should be beneficial to and sufficient for the requirements of the crop." That other waters also have been used is no ground for getting rid of the liability. The question as to the beneficial character of the water taken from the Government source and of its sufficiency are not for the Civil Court but for the Collector subject to the control of the Board of Revenue and of the Government, and when the Collector imposes the assessment by the orders of the Revenue higher authorities, the assesment is liable to be paid. [*Secretary of State for India in Council* v. *Perumall Pillai* (I. L. R. 24 M 279) *Maria Mudali* v. *The Secretary of State for India in Council* (14 M. L. J. 350) distinguished.]

Secretary of State for India v. *Chellam Pillai* 766

Madras City Municipal Act, Ss. 125 (1), 177—*Prosecution—Defence of non-exercise of profession*:—In a prosecution before the Magistrate under S. 125 (1) of the Madras Municipal Act, the defence of non-exercise of the profession is not open to the accused. The provision as to finality in S. 177 must be given its full effect; and no question can then be allowed to be raised by way of defence to a prosecution or to a distress or to a civil suit.

In re Veera Raghavalu 773

———**Estates Land Act I of 1908, S. 6**—*Effect of evidence of possession in favour of landlord before the commencement of the Act—Question for consideration—C. P. C., Act V of* 1908) *O.* 41, *R.* 33—*Appellate Court, powers of* :—The only question that

Madras Acts—(*Contd.*) PAGE

arises for consideration under S. 6 of Madras Act I of 1908 in determining whether a ryot in possession of ryoti and acquires occupancy right in it is to see whether the ryot was in possession of the land on the date of the commencement of the Act, *i. e.*, 1st July 1908 ; and the fact that a decree for possession had been passed before 1st July 1908 in favour of the landlord, does not affect the operation of the section. The second appellate Court is competent to retain the ryot in possession under the circumstances without driving him to a fresh suit, even though the decree of the lower Court be correct in the view of the law as it stood at the time of the institution of the suit.

Govinda Parama Guruvu v. *Dandasi Pradhanu* 528

———**Forest Act**—*Appeal—Applicability of S.* 12, *Limitation Act, to appeals under—No* :—*See* LIMITATION ACT, S. 12 ... 283

———**Hereditary Village Officers Act, S. 3**—*Office of karnam—Cognizability - Civil Courts Act, IV of* 1893; *applicability—Inam villages* :—Madras Act IV of 1864 and Madras Act IV of 1893 have no application to Inam villages which were not for purposes of village administration grouped with ryotwari villages. The office of kurnam in an Inam village to which the Madras Hereditary Proprietary Village Service Act has not been extended does not fall within Cls. 1 and 2 of S. 3 of Act III of 1895, but falls within Cl. 3 of that section ; and a suit for the recovery of that office and the emoluments attached thereto is excluded from the cognizance of a Civil Court. The words "other hereditary village offices" in Cl. 3 of S. 3 of Act III of 1895, mean offices other than those in localities dealt with by Cl. 1 and 2 of S. 3, and not offices of a description different from those mentioned in Cl. 1 and 2.

Audirazu Veerayya v. *Audirazu Sangayya* 281

———**S. 5**—"*Transfer,*" *meaning of—Permanent lease of service inam lands, validity of* :—The grant of a permanent lease is not a transfer of proprietary right or ownership; and, consequently, the grant of a permanent lease of service inam lands is not invalid, not being a "transfer" within the meaning of S. 5 of Madras Act III of 1895.

Kshetrabaro v. *Harikristna* 417

———**S. 13, Proviso 11, and S. 21**—*Suit to recover land on the basis that it does not form part of the Inam—Jurisdiction of Civil Court:*—A suit for recovery of land not based on the ground that the land constitutes part of the emolument of the office is cognizable by a Civil Court. A claim to recover lands by itself does not raise a question as to the rate or amount of the emoluments of the office. *Obiter.*—The question whether the emoluments of the office consisted of land or of an assignment

of revenue is " one of the facts in issue" within the meaning of the proviso II to S. 13. The effect of the words "but such decision, etc" is to preserve the jurisdiction of the civil Courts even in cases where the Collector decided the claim on the assumption mentioned in the section and not to oust the jurisdiction in cases where he did not. S. 13 is an enabling section conferring jurisdiction on Revenue Courts and by itself cannot oust the jurisdiction which would otherwise exist.

Ramanna v. *Rattayya* 94

———**Local Boards Act**—*Right of suit for illegal levy by Collector—Parties—District Board not a proper party*:—A suit for damages against the Collector in respect of an illegal levy of land cess by him is sustainable; and no action lies against the District Board in respect of the illegal levy by the Collector though the money levied was eventually handed over to the District Board.

Chinnasawmi v. *Collector of Salem* 77

———**Malabar Tenants Improvements Act I of 1900, S. 19.**—*Contracts before* 1886—*Effect of*:—A mere provision for the payment of customary compensation is not a special contract such as is contemplated by S. 7 of Madras Act, I of 1887, corresponding to S. 19 of Madras Act I of 1900. *Obiter*:—There is nothing in S. 19 of Madras Act I of 1900 which deals with a mere contract regulating the rates of compensation whether before or after 1st January 1886. If such a contract is favourable to the tenant he could always insist on it despite the provisions of S. 6; if it is unfavourable to the tenant, even though the contract was entered into before 1886 he is entitled to compensation under S. 5 and the rates prescribed in sections 9 to 18 must then prevail. If the contract before 1886 restrained the tenant from making improvements and claiming compensation therefor, such contract would *prima facie* be valid, apart from any question of the existing law rendering the restraint invalid.

Sree Manvikraman v. *Ananta Pattar* 849

———**Rent Recovery Act**—*Liability for rent—Assignor and assignee—Estoppel—Notice—Distraint, law of*:—If the liability to rent is under a contract of lease the lessee would not, by transfer, cease to be subject to the obligations under the lease. But in the case of a kudivaramdar under the Rent Recovery Act a transfer of the holding puts an end to the tenancy without notice to the landlord, though he may be estopped from disputing the continuance of the tenancy under certain circumstances, *e.g.*, where the landlord has delivered pattah for the fasli to the original tenant and has been misled into not tendering it to the successor. But where notice has been as a matter

Madras Acts—(*Contd.*) PAGE

of fact given, whether by the assignor or assignee, no question of estoppel can arise. The obligation to pay rent attaches to the person who is entitled to the holding at the commencement of the fasli without reference to the question of the time of payment; and he is the person against whom proceedings may be instituted under the Act. In India there is no right of distraint under the Transfer of Property Act, and where it exists under the rent law, there is no limitation as to the situation of the goods. Difference between the English and Indian Law of distraint stated.

Ramasawmi Aiyangar v. *Shanmugam Pillai* 739

——— **Rent Recovery Act, S. 11**—*Collector's sanction not necessary for charge of water tax*:—The Collector's sanction is not required to the charge of water tax by the zemindar against an inamdar.

Zemindar of Venkatagiri v. *Suryaprakasam* 120

———**S. 11.**—*Usage of enhancing rent for dry land converted into wet at tenant's expense—Illegal usage*:—A landlord is entitled to raise the rent only if the improvement is effected at his own expense or at the expense of the Government; and in either case, only with the sanction of the Collector. Where the rent payable is in fact higher, the case falls under S. 11 of the Rent Recovery Act VIII of 1865. A usage to charge assessment at the wet rate on account of the tenants converting land from dry to wet or any other improvement effected at the tenants' expense is illegal.

Paramasawmi v. *Pusala Thevan* 142

———**S. 11, Cl. 3,**—*Express contract and implied contract—Implied contract, when cannot be inferred—Procedure—Payment of money rent for a period of years—Effect of*:—It is not open to Courts to imply, from the mere circumstance that rent has been paid in money for a series of years, an agreement to pay money-rent. But the fact that money rent has prevailed in a particular locality for a considerable number of years may form an element in the consideration of the question of usage under Cl. 3 of S. 11 of the Madras Rent Recovery Act, VIII of 1865. In a suit for enforcement of acceptance of *asara* patta, the tenants-defendants pleaded an express contract in fasli 1299 when the parties executed a lease for 5 years, and in the alternative an implied contract to pay a fixed money rent. The express contract was found against by the Courts in India, but the plea of implied contract was found in favour of the tenants from the fact that rents at the same rate were paid and received for 4 years after the expiration of the term fixed by the leases of fasli 1299. *Held*:—(1) That under the circumstances

Madras Acts—(*Contd.*) PAGE

no implied contract could be found. (2) That alongside of the express contract embodied in the leases exchanged in fasli 1299 there could not be a collateral implied agreement relating to fixity of rent. (3) That there being no contract, express or implied, the proper procedure is for the lower Court to ascertain the rates payable as provided in Cl. 3 of S. 11.

Parthasarathi Appa Row v. *Venkata Narasayya* 596

——**Revenue Recovery Act, S. 35**—*Mulgeni tenure—Increase in Government revenue—Liability to pay—Mulgar liable to pay.—See* LAND TENURE 640

——**S. 42**—*Sale of land included in puttah other than that in respect of which arrear is due—Sale not free of incumbrances:*—S. 2, Act II of 1864, does not mean that any particular land is security for the public revenue only in so far as that revenue is asessed upon itself. Where a defaulter holds two plots of land in the same district, free of encumbrances, both are liable to be sold under S. 42 of the Act in respect of the arrear due upon either.

The Secretary of State for India v. *Pisipati Sankarayya* .. 794

——**S. 59—" Suit for** refund of assessment and *declaration and injunction—Six months' limitation:*—A suit for declaration and injunction as regards an order for removal of steps and for recovery of penal assessment, all arising out of the same cause of action, is not maintainable even as to any part thereof if brought after 6 months from the date of the cause of action by reason of S. 59 of the Revenue Recovery Act.

Sankarappa Naicken v. *The Secretary of State* 977

——**Act XXIII of 1871**—*Attachment and sale of unenfranchised inam of land revenue or grant of money:*—An unenfranchised inam can be attached and sold in execution of decree of a Civil Court.

Varadayya v. *Nammalwar* 88

——**Reg. XXV of 1802, S. 4**—*Presumption—Lands held on service tenure before Permanent Settlement—Lakhiraj:*—There is no presumption that land held free of rent to the Zemindar for rendering service to the Zemindar before the Permanent Settlement was Lakhiraj land at the date of the Permanent Settlement, so as to enable the Government to impose full assessment thereon.

Rajah Venkatarangayya v. *Appalarazu* 728

Mahomedan Law—Contract—*Marriage settlement—Agreement to pay annuity to bride—Right of a beneficiary not a party to the contract—Liability of the settlor—Time when matrimonial rights and obligations come into existence—Kharch-i-paudan—English pin-money—Construction of the agreement—*

Mahomedan Law—(*Contd.*) **PAGE**

Issue of misconduct—Judge's finding and opinion.—The suit was brought by the plaintiff, a Mahomedan lady, against the defendant, her father-in-law, to recover arrears of a certain allowance, called Kharch-i-paudan, under the terms of an agreement executed by him prior to and in consideration of her marriage with his son, both she and her husband being minors at the time of the execution of the agreement. *Held*, that although the plaintiff was no party to the agreement, she was clearly entitled to proceed in equity to enforce her claim, and that the rule of common law that a person not a party to an agreement could not take advantage of its provisions, was not applicable to the facts and circumstances of the present case, where the agreement executed by the defendant specifically charged immoveable property for the allowance, which he bound himself to pay to the plaintiff, who was the only person beneficially entitled under it. [*Tweddle* v. *Atkinson* (1 B & S 393) referred to and distinguished.] *Held also*, that *Kharch-i-paudan*, which literally means "betel-box-expenses." was a personal allowance to the wife customary among Mahomedan families of rank, especially in Upper India, fixed either before or after marriage, and varying according to the means and position of the parties; and that ordinarily it would be received and spent in the conjugal domicile; but the husband had hardly any control over the wife's application of it, either in her adornment or in the consumption of the article from which it derived its name. *Held further*, that the pin-money in the English system, though meant for the personal expenses of the wife, was a fund which she might be made to spend during coverture by the intercession and advice and at the instance of the husband, and that no obligation of that nature was attached to the allowance called *Kharch-i-pandan*. *Held finally*, that under the agreement, the defendant's liability began with the plaintiff's entry into her husband's home when, under the Mahomedan Law, the respective matrimonial rights and obligations came into existence ; and that the plaintiff was entitled to succeed, there being no condition in the agreement that the allowance called *Kharch-i-pandan* should be paid only whilst she was living in her husband's home or that the defendant's liability should cease whatever the circumstances under which she happened to leave it.

[*Husaini Begam* v. *Khwaja Muhammad Khan and others* (I. L. R. 29 A 151) affirmed].

Where a lady's misconduct was in issue, the Subordinate Judge considered that it was not "legally proved," but expressed himself : "Although unchastity is not duly proved, yet I have no hesitation in holding that plaintiff's (lady's) character is not free from suspicion" : *Held*, that an opinion of that kind was unsatisfactory ; that either the allegation

Mahomedan Law—(*Contd.*) PAGE.

of unchastity was established or it was not, and that if the evidence was not sufficient or not reliable, there was an end of the charge and it was not proper to give expression to what the Judge called " suspicion."

Muhammad Khan v. *Husaini Begam* 614

———**Divorce**—*Talak—Rajai and Bayan talaks—Iddat explained—Maintenance*:—An irrevocable divorce does not completely destroy the relationship of husband and wife until after the expiry of the period, and a wife in that position is entitled to maintenance. [Marriage, Talak (Rajai and Bayan) *i. e.*, divorce revocable and irrevocable, Iddat and their incidents, both according to the Hanafi and Shafei lawyers, discussed and explained. *In re* Dev Mahomed (5 A. 226); *Shah Abu Ilyas* v. *Ulfat Bibi*. (19 A. 50) commented on]

Syed Saib v. *Meeram Bee*. 12

See Cr. P. C., S. 488.

———**Legitimacy**—*Prostitute mother—Prolonged cohabitation—Presumption of marriage—Father acknowledging the mother as his wife—Evidence*:—Where the question was whether the appellant, a Mahomedan, was to be regarded as the legitimate son of his father: *Held*, that prolonged cohabitation might give rise to a presumption of marriage, but that presumption was not necessarily strong and did not apply in a case where the mother, before she was brought to the father's house, was a prostitute: and, that, there being no evidence of marriage between the parents of the appellant, prolonged cohabitation between the parents, certain instances in which the deceased father was said to have acknowledged the mother as his wife, and the fact that two of the appellant's sisters whose legitimacy was as much open to question as his own, were married to respectable men and the marriages were conducted with due formalities, did not establish that the appellant was born in wedlock, and was legitimate.

Ghazaffar Ali v. *Kaniz Fatima* 579

———**Marriage—Divorce**—*Husband and wife, relation between—Essentials—' Talak,' meaning of—Sureeh and Kinayah, distinction between Hamilton's Hedaya, authority of*:—Marriage among the Mahomedans is in its constitution a contract, and it is open to a man or woman entering upon marriage to define their future marital rights and liabilities *inter se* so as to considerably modify the rights and obligations that ordinarily flow from a valid marriage. The husband has an absolute right to dissolve the marriage, and the only condition for a valid exercise of such a right is that he must be a major and of sound mind at the time. The wife's consent or absence of consent is immaterial, and the words of repudiation need not be

Mahomedan Law—(*Contd.*) PAGE.

direct in form, nor need they be addressed in the wife's presence. Marriage and its incidents and connotation and the rights and obligations *inter se* between husband and wife under Mahomedan Law explained. Sureeh (express) and Kinayah (ambiguous) forms of divorce distinguished and their legal incidents pointed out. The word "Talak" and its meaning pointed out. The authority of Hamilton's *Hedaya* as to how far it can be taken as a correct exposition of the Mahomedan Law pointed out. *Furzund Hossain* v. *Janu Bibee* I.L.R. 4 C. 588 dissented from.

Asha Bibi v. *Kadir Ibrahim Rowther* 1

———**Minor**—*Agreement by guardian not to divide spes successionis:—Obiter*:—Under Mahomedan Law, to bind the minor by his guardian's consent urgent necessity or clear benefit must be shown. An agreement by the guardian not to divide a *spes successionis* is not within the rule and therefore not binding on the minors.

Aliyamma v. *Kunhammed* 946

———**Suit by Mahomedan sharer for share**—*Limitation*:—*See* LIMITATION ACT, ART. 123 288

———**Wakf**—*Construction—Illusory wakf—Superstitious uses—Fatehas, performance of—Failure of some of several objects, effect of—Perpetuities*:—The performance of fatehas in so far as it involves the expenditure of any money in feeding the poor, is a valid object of wakf. It is not an objection to the validity of a wakf that some provisions are made in the deed of wakf for the benefit of the donor's family, provided such provisions are not inconsistent with the gift being one substantially for charity, and this question has to be decided in each case with reference to the terms of the particular deed. If the provisions for the donor's children and descendants in a deed purporting to be by way of wakf, exhaust the bulk of the income and are to last for an unlimited period of time, such a wakf would be illusory. Where a Mahomedan donor mentions several purposes as objects of his bounty and one of those purposes fails, if a general intention can be gathered from the deed dedicating the property to charity, the entire property is to be devoted to the lawful objects of the wakf, if any, mentioned in the deed, and in the absence of any such object being specified, to the poor, whether a definite portion of the income has been set apart for the objects which fail, or not; and it makes no difference in principle to what the failure is due. The expression of a general charitable intention need not be in any particular form of words. Meaning and use of words "Wakf" and "Sadaat" explained. *Held*, also that the deed of endowment in the case was not bad. *Held also* on a construction of the deed in the case:—That the intention apparently is that the charitable objects mentioned are in the first place to be

Mahomedan Law—(*Contd.*) PAGE.

benefited, and if any surplus is left, it is to be divided among the heirs whom also the donors, though, no doubt, wrongly, supposed to be proper objects of the gift; that the trustees were not meant to have unfettered power and that the intention of the donor was that the trustees should treat the different objects of the donor's bounty according to the rate provided by law, *i.e.*, equally; that the salary provided for the dharmakartas was not unreasonable and that the direction to accumulate one third of the income was intended for the benefit both of the charitable purposes mentioned as well as the heirs. *Held also* :—That the wakf was valid; that the income of the property was to be devoted for the benefit of objects mentioned in the deed other than the "heirs" of the donors; and that the provision for accumulation which would enure solely for the benefit of charitable purposes in the above view did not offend against the law of perpetuities.

Ramanadhan Chettiar v. *Vada Levvai Marakayar* 254

Majority and minority.—*Relation between—Trusts—Private and public—Consultation necessary.—See* TRUST.

Malabar Law—Deed of sale in favour of a woman and her son—*Construction—Joint tenancy not recognized—Co-parcenary—Interest taken by each—Attachment of property in execution of decree against one after death of the other*:—Co-parcenary exists among the members of a Malabar tarwad; and the rule of joint tenancy is not applicable to acquisitions by people governed by the Marumakkathayam law. Where two members of a tarwad, acquire property in their name for the tarwad, on the death of one, all the other members of the tarwad, and not the survivor exclusively, take it. But where a property is purchased in the name of a woman governed by the Marumakkathayam law and her son, for the benefit of the tavazhi, it would depend upon the constitution of the tavazhi whether the son has any alienable interest in it or not. If the tavazhi form a distinct branch from the main tarwad with separate properties and its own karnavan as the manager of its property and the guardian of the minor members, the incidents of tarwad property apply to it, and then the son has no alienable interest in the property, and the property could not be sold in execution of a decree against him. But if the woman and her descendants or her tavazhi have not separated themselves from the main tarwad, the fact of acquisition of separate property will not make them any the less members of the original tarwad and constitute them a separate tarwad with its incidents of impartibility, etc., and the property separately acquired will be the private property of the woman's decendants and the interest of her son will be liable to be sold as in the case of an ordinary Hindu family. But if any member dies without his interest

Malabar Law—(*Contd.*) PAGE.

being alienated during his life-time the interest lapses to the other members of the tavazhi and it cannot be sold.

Ummanga v. *Appadorai* 268

——**Gift to female and her children**—*Incidents of tarwad property—Contract to sell by some of several owners—Specific performance*:—Where a gift of property is made to a Malabar female and her children, governed by the Malabar Law, the donees take it with the incidents of tarwad property, *i. e.*, the property is not merely impartible but the donees, though not forming a tarwad with a karnavan of its own, have also the same interest in the property that they would have had if they had formed a separate tarwad; *i. e.*, every child of the female donees obtains an interest in it at his or her birth. A suit for specific performance of a contract to sell lands belonging to several jointly cannot be maintained if the contract be by some only.

Kalankandi Koma v. *Siva Sankaran* 134

——**Karnavan, arrangements by**—*When can be impeached by successor*:—Per *Krishnaswami Aiyar* J:—The question as regards the propriety of the arrangement made by a previous Karnavan is open to the succeeding Karnavan to raise; but an arrangement that was *bona fide* and proper at the time when it was entered into cannot be subsequently attacked by the succeeding Karnavan on the ground that the property given for maintenance gives a larger income at the date of suit than it was expected to yield at the time when it was allotted.

Achutan Unni v. *Vasunni* 344

——**Tarwad**—*Gift to members—Right of management of gifted properties*:—If properties are gifted to certain members of a Malabar Tarwad the senior member amongst the grantees of property has the right of management in respect of the properties obtained by gift, though the grantees and their descendants do not become a Tarwad in respect of the gifted properties.—[*Koroth Amman Kutti* v. *Perungottil Appu Nambiar* (29 M. 322) dist. and exp. *Kunhacha Umma* v. *Kutti Mammi Haja* (16 M. 201) foll.]

Abdulla v. *Chekkotti* 368

——**Tarwad—Property acquired by Anandravan while a manager of branch and when in possession of the funds of the branch without anything of his own**—*Tavazhi—Tarwad—Constitution of*:—The property acquired by the manager of a branch who is only an Anandravan of the whole tarwad belongs to the branch if he was at the time of the acquisition in possession of the funds of the branch without anything of his own. Where a female and some or all of her children obtain property from her father and have been in

Malabar Law—(*Contd.*) PAGE.

possession for 80 years and the members of the branch have constituted a separate branch and lived separately, a finding based on the fact that the members constituted a separate Tawazhi Tarwad is not bad in law.

Chattu Nair v. *Mulamparol* 86

Minor—Mortgage by guardian—*Onus—Reviving time-barred debts*:—A mortgagee of a minor's estate is bound to prove that the mortgage was executed by the guardian for purposes binding on the minor. The guardian of a minor has no authority to bind a minor's estate by reviving time-barred debts.

Veerappa Naick v. *Muthusami Naick* 567

Mortgage bond—Construction—*Usufructuary mortgage of two properties—Mortgagee purchasing one of them in execution of a decree on a prior mortgage—Liability of the other property to pay the whole mortgage debt—Mortgagee's undertaking to pay the Government revenue—Suit to redeem the other property by purchasers of equity of redemption—Mortgagee's right to tack on the amount of Government revenue paid—Laches—Equity* :—Where two properties *A* and *B* were mortgaged to secure a debt, while one of them, *B*, had previously been mortgaged to secure a different debt due to the same person, and the property *B* was sold in execution of a decree obtained on the prior debt and bought by the mortgagee himself: *Held* that the property *A* was liable to bear the entire burden of the subsequent mortgage debt. Under the terms of the mortgage the mortgagee was to have possession of the mortgaged properties, realise the rents and profits and pay therewith the Government revenue due on each property and retain a sum of money for interest paying the balance as *malikana* to the mortgagor. It was further stipulated that the mortgagee should pay the increase in Government revenue and deduct it from the *malikana* due. The mortgagee paid the excess revenue due on *A* and *B* and claimed to tack on the excess revenue he paid in respect of property *B* before the execution sale to him to the amount payable on redemption of *A*. The mortgageee's name was placed on the Collector's register as mortgagee in possession. The redemption was sought for by a purchaser from the original mortgagor. *Held*:—That it was the plain duty of the mortgagee to pay the Government revenue for both *A* and *B*; and he cannot be allowed to throw on the mortgagor the burden of his own laches in not deducting the amount paid from the *malikana* due on property *B*, before his purchase. *Held also* :—That any equity which might have been invoked by the mortgagee against the original mortgagor did not subsist as between the mortgagee and the purchaser of the equity of redemption.

Thakur Das v. *Collector of Aligarh* 890

Mortgage bond—(*Contd.*) PAGE.

———**of mortgage decree** — *Suit for sale of decree* :—A mortgagee of a mortgage decree can bring a suit for sale of the mortgaged decree and the purchaser may proceed to execute the decree which he has purchased after 12 years of decree.—

Venkatarama Aiyar v. *Essumsa Rowthen* 330

———**Priority** :—*See* T.P.A., S. 78 153

———**Priorities—Sub-mortgagee**—*Subsequent mortgage by original mortgagee as an owner in fee—Suit by sub-mortgagee and purchase of his (the mortgagee's) interests—Suit by purchaser without impleading sub-mortgagee—2nd suit by sub-mortgagee to enforce his mortgage against the original mortgagors, mortgagee and the subsequent mortgagee-purchaser*:—*A*, an assignee of a mortgage, sub-mortgaged his interest by way of deposit of title deeds to *B* in Oct. 1895. In March 1895, *A*, purporting to be owner in fee, executed a mortgage to *C*. In July 1902 *C* brought a foreclosure suit which was decreed by consent in the same month. *B* was not a party to the suit. But before *C*'s foreclosure suit *B* had obtained a decree for sale and purchased *A*'s interest. *B* now sued *A*, *C* and *A*'s original mortgagors to enforce his mortgage. *Held* that *B* not having been made a party to *C*'s suit his rights were unaffected and that the suit should be decided on enquiry as to the priority between *B* and *C*.

Maung Tha Huyin v. *Maung Mya*. 153

———**Redemption**— *by one of several co-mortgagors — Right of mortgagee to question right of redemption—Trusts, public and charitable—Majority and minority—Consultation necessary —Estoppel by representation—Renewal of kanom—Trustees — Suit by one of several, for redemption — Non-joinder as co-plaintiffs—Decree, form of*:—An assignee of the mortgage interest is entitled to question the right of one of the co-mortgagors to redemption whether or not the remaining co-mortgagors acquiesce in the claim of the plaintiff to redeem. In the case of public and charitable trusts, all the trustees should have an opportunity of stating their opinion; and any act (*e. g.*, renewal of a *kanom*) done by the majority without reference to the minority is not valid. A provision that the managing *Uralars* should grant renewals " with the greatest possible number of *Uralars* receiving the renewal fees" does not mean that the majority can effect renewals without any reference to the minority or without inviting its co-operation. The rule of estoppel by representation in holding out certain persons as clothed with authority has no application where the majority has only a limited authority within the limits of which a stranger dealing with them has to find the power to enter into the transaction. A renewal

Mortgage bond—(*Contd.*) PAGE.

of a *kanom* was effected by a majority of *Uralars* without consulting the minority. *Held* that the renewal was invalid and that the minority was not estopped from disputing the validity of the *kanom* as regards the kanomdar who was a stranger. One of several trustees may sue for redemption without consulting the others or making them co-plaintiffs, provided all are impleaded in the suit. The proper decree in such cases is to order the trust property to be restored to all the trustees for the benefit of the *cestui que trust.*

Kunhan v. *Moorthi* 951

———**Subrogation**—*Principles of—Covenant to discharge prior incumbrance—Discharge of puisne incumbrance as well—Rebuttal of presumption* :—The principle of subrogation by payment to the prior incumbrancer rests upon the presumption of an intention to keep alive the first mortgage as a shield against the puisne incumbrance and the presumption is rebutted when the transaction in question contemplates the discharge of the puisne incumbrancer by payment out of the purchase money. The rule as to subrogation only applies when the purchaser has covenanted to discharge the previous incumbrance.

Govindasawmi Thevan v. *Doraisawmi Pillai* 381

———**Substitution of securities** :—*Mortgage of undivided share by co-parcener in Hindu undivided family prior to partition* :—*See* T. P. A., S. 73 393

———**Substitution of securities** :—*Mortgage of mortgage decree—Transfer of lien to money realized in execution of mortgage decree* :—A mortgagee of a mortgage-decree is entitled to enforce his lien on the money realized in execution of the decree mortgaged. [*Singaravelu Udayan* v. *Ramayar* (13 M. L. J. 306) dissented from.]

Venkatrama Aiyar v. *Esumsa Rowthan* 330

Mulgeni tenure—*Increase in Government revenue—Liability to pay* :—*See* LAND TENURE 640

Nambudris—*Self-acquired property, succession to* :—The self-acquisition of a Nambudri goes to his own natural heirs after his death and not to his illom. He can devise it or gift it away as he pleases. The ordinary Hindu Law as expounded in the *Mitakshara* is applicable to the Nambudris except in so far as custom or usage has modified it.

Vishnu Nambudri v. *Akkamma* 938

Negotiable Instruments Act—Ss. 7, 8, 43—*Plea that maker was a mere name lender—"Consideration"—Meaning of—Contract Act, S. 2—"At the request of the promisor"* :— " Consideration " means an act, abstinence or promise made by the promisee or some other person at the desire of the

Negotiable Instruments Act—(*Contd.*) PAGE.

promisor and the mere admission by the defendant in a suit on a negotiable instrument that he was a name lender for the real obligor, without more (or without proof of a request by the maker to advance money to the real obligor), will not make the note one supported by consideration so far as the maker is concerned. *Abdur Rahim* J.—*Semble* —In a suit upon a negotiable instrument, it is open to the maker of the note to plead that he signed the promissory note as a mere "name lender," (as though it was agreed that he was not to be sued upon it). [*Subba Narayan* v. *Ramaswami Aiyar* [(1906) 30 M. 88 dist.]

Sesha Aiyar v. *Mangal Doss Jee* 144

Oudh Laws Act (No. XVIII of 1876) S. 9, Clauses (1) & (2) —*Meaning of the term "Mahal"—Inferior Mahal—Right of pre-emption* :—The word 'Mahal' in the Oudh Laws Act (XVIII of 1876) means any parcel or parcels of land which have been separately assessed to or are held under a separate engagement for the revenue, and for which a separate record of rights has been prepared. Each Mauza or village is, as a general rule, a separate Mahal, but a Mahal may consist of two or more Mauzas or parts of Mauzas or only a portion of one Mauza. Where each village in a Taluq is separately assessed to revenue and the Taluqdar enters into one engagement for the payment of the revenue on all the villages, the whole Taluqa is a Taluqdari Mahal consisting of a number of villages, each of which is separately assessed to revenue and may be regarded as an inferior Mahal. There is no right of pre-emption under S. 9, Clauses (1) and (2) of the Oudh Laws Act (XVIII of 1876), unless at the date of the sale of the property in respect of which the right of pre-emption is claimed, the claimant of such a right and the vendor of the property are co-shares in any sub-division of the tenure in which the property in question is comprised or in the whole Mahal, though the claimant and the vendor may have been jointly liable to the Taluqdar for the Government revenue plus *malikana* as the rent of the property sold.

Sheoraj Kunwar v. *Harihar Bakhsh Singh* 609

———**Estates Act (I of 1869), Ss. 8, 22, 23**—*Intestate succession—Sannad—"Rule of primogeniture."*—In a case of disputed succession to the Taluq of an Oudh Taluqdar where there was a declaration in the Sannad conferred in 1860 A. D. by the Government upon the grantee, whose name was entered in Lists 1 and 5 of Section 8 of the Oudh Estates Act (I of 1869), that the succession to the estate comprised in the Sannad should be regulated by the "rule of primogeniture" : *Held*, that the "rule of primogeniture" was the rule of the lineal primogeniture. *Held*, also, that under Act I of 1869 the succession to a Taluq must be to an impartible estate, whether the estate "ordinarily devolved

Oudh Laws Act—(*Contd.*) PAGE

upon a single heir," as in List 2, or whether the succession was to be regulated by the rule of lineal primogeniture as in Lists 3 and 5. [*Dewan Rau Bijai Bahadur Sing* v. *Rae Jagatpal Sing* and *Rae Bisheshur Bakhsh Sing* v. *Dewan Rau Bijai Bahadur Sing* (I. L. R. 18 C. 3 P. C.) and *Jagdish Bahadur* v. *Sheo Pertab Singh* (I. L. R. 23 A. 369 P. C.) followed.] *Held*, further, that the specific order of heirs described in the first ten sub-sections of S. 22 of Act I of 1869 must stand as a statutory substitute of the line of succession set forth in the Sannad; and that Sub-S. 11 of that section relegated the parties to the situation in which they would have been found apart from the Act. *Held*, finally, that the succession must be regulated according to the line of succession set forth in the Sannad and accordingly the respondent was entitled to succeed under the rule of lineal primogeniture. [*Brij Indar Bahadur Singh* v. *Ranee Janki Koer*; *Lal Shunkur Bux* v. *Ranee Janki Koer*; and *Lal Sutla Bux* v. *Ranee Janki Koer* (L. R. 5 I. A. 1, s.c. 1 C.L.R.) 318 referred to. Act I of 1869, S. 23 discussed.]

Debi Bakhsh Singh v. *Chandrabhan Singh*. 917

———**Estates Act (I of 1869), Ss. 13, 16, 17**—*Immovable property—Gift "inter vivos"—Ambiguous instrument—Construction*:—*Held*, that immoveable property in Oudh is not transferable by gift *inter vivos* otherwise than by a registered deed: that there is no contradiction in Ss. 16 and 13 of the Oudh Estates Act (I of 1869); that a gift in contravention of S. 16 is not valid in case the object of the gift is exempt from the operation of S. 13, and the gift, therefore, is subject to the additional fetter imposed by that section; and that a deed of gift must be registered as required by S. 17 of that Act. In ascertaining the meaning and effect of an instrument, dated the 6th of May, 1887, which was neither very clear nor altogether intelligible, their Lordships looked at the matter broadly and agreed with the lower appellate Court in holding that it was testamentary and could not be construed as a gift *inter vivos*.

Udai Raj Singh v. *Bhagwan Bakhsh Singh*. [LORD MACNAGHTEN]. 458

———**Talukdars**—*Construction of Rules of the British Indian Association—Maintenance, provision for*:—On a construction of Rule 1 of the Rules of Practice framed by the British Indian Association dated 25th September 1867, regarding the provision for maintenance which was as follows:—"This class will remain in possession of what they actually had at annexation rent free during their life-time but subject to payment in the second generation of 25 per cent. and will not have transferable rights" *Held*,—That the expression "50 per cent" meant 50 per cent. of a bulk on the basis of which Government revenue for the time being is assessed, *viz.*, the assumed rental, which being based on

PAGE

Oudh Laws Act—*(Contd.)*
a comparison of the receipts for several years is taken to represent a fair average of the Talukdar's annual receipts.

Thakur Nawab Alikhan v. *Wahid Ali.* LORD SHAW .. 195

Onus—*Hindu Law—Adoption—Proof*:—*See* HINDU LAW—ADOPTION 458

———**Limitation Act, Art. 149**—*Suit by the Crown*:—*See* LIMITATION ACT, ART. 149, also. 66, 74

———**T. P. A., S. 53**—*Good faith*:—*See* T. P. A., S. 53. .. 211

———**Parent and child**—*Action against parent for procuring breach—Justification, plea of—Malice, proof of*:—*See* TORTS—BREACH OF PROMISE 734

Partition, provisional—*Covenant to make another partition at the end of the term*:—*See* DEED—CONSTRUCTION. 79

———*Right of—Interests permanent but not co-ordinate in degree—Mokuraridars' interest and Zemindari interest*:—Where two parties are in joint possession of land under permanent titles there is a right to partition, even though the titles are not identical, *e.g.*, (as in this case of a Mokuraridars interest, and a Zemindar's interest) the fact that one of them, the Mokurari dar's interest is liable to forfeiture, on certain contingencies, does not affect the rule.

Bhagwat Sahai v. *Behari Mitter.* 907

Partnership suit—*Parties*:—*See* C. P. C., S. 11. 308

———**Suit against some—Decree**—*Second suit against all—Not maintainable*:—*See* C. P. C., S. 11. 308

———*Suit for general account barred—Suit for share of particular item, right of*:—There is nothing to prevent a partner whose remedy for a general account against his other partners is barred from maintaining a suit for his share of a particular item received by his co-partners after the dissolution of the partnership.

Thiruvengada v. *Sadagopa* 987

Pasturage right, nature of—*Acquisition of right—Extent of user*:—The right of pasture cannot be said to exclude the owner's right to the possession and enjoyment of the property over which such a right may exist. *Quaere*:—Whether in the case of Government waste, where the owner has no use for the property and is not present on the spot to resist any acts of trifling enjoyment on the part of another, the mere pasturing of cattle by the adjoining ryot would amount to an enjoyment of a right so as to create a presumptive title.

Gongela Pichi Naidu v. *Veeriah* 362

Penal Code, S. 166—*"Direction of the law"—Service of notice—Representation of notice to be warrant*:—A peon whose business it was merely to require the signature of the person on

Penal Code—(*Contd.*) PAGE

whom the notice is to be served to an acknowledgment of the service disobeys a direction of the law within the meaning of S. 166, Indian Penal Code, by representing that the notice is a warrant and arresting the person under colour of the alleged warrant.

In re Rungaswami Naidu 568

———**S. 193**—*Deposition not taken in accordance with law—Cr. P, Code, S.* 360:—A conviction for perjury in respect of statements made in a deposition not read out in the presence of the vakil or the parties as required by law when the deposition has been signed by the party as having been made by him is not bad in law.

Bogra, In re 943

———**S. 211**—"*Instituting criminal proceedings*"—*Statement under S.* 162, *Cr. P. C.*:—A statement made to the Police under S. 162, Cr. P. C., after the law has been set in motion and by which the prosecution cannot be said to have been instituted, cannot be made the basis of a prosecution for an offence under S. 211, I.P.C.

In re, Krishna Bhipadithaya 132

———**S. 302**—*Explosive Substances Act*—(*Act VI. of* 1908) *Ss.* 3, 5 —*Essentials for conviction—Evidence Act, Ss.* 106 *and* 114.—*Chemical Examiner's Report—Cr. P. C., S.* 378—*Supplementing prosecution evidence.*—Per *Benson* J.:—If a person buries a bomb in a frequented path where it is almost certain to be trodden on and to explode and cause the death of any one treading on it, and if it does, in fact, explode and cause the death of any person, that person is guilty of murder unless he can explain his action in such a way as to negative the inference as to his intention which the nature and circumstances of the act suggest. Per *Abdur Rahim* J.:—A Chemical Examiner's report is admissible in evidence without the Chemical Examiner being called as a witness. But the report can be of no use unless there is proof of the identity of articles found during investigation and sent to the Chemical Examiner with the articles examined by him. It is the duty of the prosecution to prove their allegations by means of sufficient and reliable evidence; and if the evidence of the prosecution is neither satisfactory nor conclusive, that defect cannot be cured by the fact that the accused is unable to make out positively that such evidence is false and has been manufactured by any particular person or persons interested in the prosecution. In a criminal trial even if the evidence in support of a charge is false, it would more often than not be impossible for an accused person to show how it came to be fabricated. Under S. 5 of the Explosive Substances Act it is not necessary to come to any more definite finding than that the accused had possession of the explosive aubstance under

Penal Code—(*Contd.*) PAGE

suspicious circumstances; but mere suspicion would not suffice for a conviction under S. 3 of the Explosive Substances Act, the gist of the latter section being the causing of an explosion unlawfully and maliciously which must be proved in the ordinary way. The presumption under S. 114 of the Evidence Act cannot be invoked to the help of the prosecution for murder on the bare circumstance that the accused had got one of the implements which form an ingredient of a bomb prepared by a blacksmith some days before the occurrence and had given a false name to the blacksmith and had failed to give a proper account as to what became of the implement afterwards. Where the deceased was blown to pieces by the explosion of an infernal machine buried in a pit dug in a frequented foot-path and upon the evidence it was found that the 1st accused had an iron arch used as an important part of the machine made through a blacksmith some days before the occurrence and when procuring it and on being questioned gave a false name and address and stated that it was required for the purpose of distillation (which purpose was not made out) and at the trial the prisoner denied having had anything to do with the iron arch and the explosive or infernal machine is such as is used for destruction of human life and property: *Held* by *Benson* J. that the accused was guilty of murder under S. 302, I.P.C., and of the offences under Ss. 3 and 5 of the Explosive Substances Act, VI of 1908. (Per *Chief Justice* and *Abdur Rahim* J.)—The evidence was not sufficient to support either a conviction for murder under 302, I. P. C., or of an offence under S. 3 of the Explosive Substances Act, VI of 1908. *Held* Per *Curiam*.—The accused is guilty of an offence under S. 5 of Act VI of 1908. On a reference under S. 378 of the Cr. P. C. where the Division Bench were agreed upon a particular conviction, the Judge hearing the reference was not entitled to go behind it, and hence the propriey af the conviction under S. 5 of Act VI of 1908 in the case could not be questioned.

In re Ramayya 657

———**Ss. 464, 471**—*False document—Copy of false document not a false document*:—A copy of a false document is not a false document within the meaning of S. 464.

In re, Gopalakrishna Heggade 538

Pensions Act (XXIII of 1871) S. 6—*Certificate under that section—Collector's order referring the parties to Civil Court—Certificate produced in the Court of Appeal—Sanad—Construction—Grant of the soil of a village*:—Where in a partition suit, the property was subject to the Pensions Act and the Subordinate Judge decreed partition, holding that an order of the Collector, referring the parties to a Civil Court to determine whether the

Pensions Act—(*Contd.*) PAGE

said villages were partible, was equivalent to a certificate under S. 6 of the Pensions Act XXIII of 1871, and the High Court on appeal allowed the plaintiff to procure and file a certificate under the said section of the said Act: *Held*, that the defect was cured and the decree should not be interfered with in appeal. *Held*, further, that where the grant was not a grant of land revenue but of the soil itself, the Pensions Act did not apply.

Ganpat Rao v. *Anand Rao* 164

Perpetuities, applicability to wakf—*No*:—*See* MAHOMEDAN LAW—WAKF. 254

Physical comfort—English and Indian standards—Distinction :—*See* EASEMENTS ACT, S. 5. 292

Pleader—*Professional misconduct—Admission of charges—Formality in drawing up the charges*:—Two learned Judges of the Chief Court found that the appellant, who acted for the plaintiff as pleader in a pre-emption suit, had taken advantage of that position of trust in order to cheat his client out of the subject-matter of the suit, and obtain it for himself; and made an order removing the appellant permanently from the list of pleaders entitled to practise. The appellant thereafter presented a petition asking for a review of that order on various grounds. At the hearing of that petition his counsel in his presence withdrew all the grounds alleged in the petition as grounds for review, admitted that the facts were as found in the order under review, and stated that the appellant had been guilty of grave professional misconduct. Under these circumstances, the Court reviewed its former decision and made a second order reducing the penalty imposed upon the appellant to suspension from practice for a period of three years. *Held*, that the charges were not perhaps very formally drawn up but the substance of what was imputed to the appellant was perfectly well understood by all parties; that as the appellant, and his counsel on his behalf, deliberately admitted the charges made against him in the sense in which those charges were understood by the learned Judges, the latter had ample justification for the orders which they passed; that the latter of those two orders went as far in the direction of mercy as it properly could go; and that the appeal should be dismissed.

In re Chanda Singh. 447

———*Agency business—Using principal's money for agent's own business without authority*:—A vakil acting as an agent for sale of immoveable property will be acting improperly in using the purchase-money for his own purposes without authority from his principal. In the particular case before their Lordships, they deemed it sufficient to censure the vakil for the abuse of

Pleader—(*Contd.*) PAGE

his position as agent, having regard to the fact that the vakil was not acting as vakil in the agency and also to the fact that there was no dishonest intention on his part.

In re a High Court Vakil 494

———*False plea of alibi in a case against the pleader*:—In the case of alleged professional misconduct on the part of a pleader who was the accused in a case of defamation in that he set up a false plea of *alibi* their Lordships thought they were not called upon to make any order.

In re a Second Grade Pleader 499

Pleader's right of retainer—*Extent*:—A pleader has no right of retainer in monies realized by him in one cause for his dues in other causes conducted by him

Narayanaswami v. *Hanumannah* 326

Possesion, meaning of—*See* SPECIFIC RELIEF ACT, S. 42. .. 302

Possessory title—*Water course—Incorporeal rights*:—Incorporeal rights are in many cases capable of possession just as much as rights to corporeal hereditaments, and there is no distinction in principle between the rights of a person without title in possession of land for less than the statutory period to the possession thereof and those of a person in similar enjoyment of a water course; and consequently the latter is entitled to be protected as against all but the true owner in his enjoyment.

Kondappa Rajan v. *Dwarkonda Suryanarayana* .. 803

Post Office Act, Ss. 64, 67, Cl. 2—*V. P. order—Declaration—"Order," meaning of—Conduct of parties—Duty of addressee of paper unordered—Statute—Construction—Bye-laws*:—According to the general canon of interpretation when a statute empowers the Government or any other authority to frame rules or bye-laws for the purpose of carrying out the object of the statute, rules or bye-laws so framed must, if within the scope of such powers, be regarded as part of the enactment. Rule No. 68, Notification dated 5th August 1908, *Gazette of India*, Part I, August 1908, p. 747, requiring the sender of a V P. article to make a declaration is a valid one and if the sender makes a false declaration or a declaration which he does not himself believe to be true, he makes himself liable to the penalty prescribed by S. 64. Cl. 2 of S. 74 is obviously meant to meet cases for which no penalty is prescribed by any of the sections of the Act itself. An order cannot be said to have been received by one person from another to send an article by post unless the latter is shown to have communicated a request or a desire to the former to that effect. The communication of the request need not perhaps be made by means of the words written or spoken

Post Office Act—(*Contd.*) PAGE

and may be inferred from the previous conduct of the addressee. There is no obligation on the part of the receiver of a paper not ordered by him either to return it or to reply to the sender's letters; and the receipt of the paper, though perhaps indicative of a willingness to pay on the part of the receiver, cannot be construed as *an order* to send the article by V. P. for realization of the amount due within the meaning of the rule. *Ghulam Rabbani* v. *King Emperor.* 6 A.L.J. 481.

Crown Prosecutor v. *Kothandaramiah.* 402

Power of attorney to sell immoveable property—*Construction—No authority to receive purchase money*:—*See* PRINCIPAL AND AGENT. 479

———**Pleadings—Inconsistent claims**—*Claim to possession first as purchaser and then as mortgagee*:—Where plaintiff alleged title as purchaser and that is found against, he cannot afterwards claim to be entitled to possession as usufractuary mortgagee before the purchase, the two claims being inconsistent with each other.

Kumarasami Chetty v. *Sakka Naik* 141

———**Procedure**—*Conversion of second appeal into revision petition.*

See PROVINCIAL SMALL CAUSE COURTS ACT, S. 25.

———*Procedure—Parties—Non-joinder*:—*See* C. P. C., O. 1, r. 9. 722, 364

Presumption—*Lakhiraj*:—*See* MADRAS Regulation XXV of 1802.

Principal & Agent—*Agency business—Using principal's money for agent's own business without authority—See* PLEADER—MISCONDUCT. 494

———*Power of Attorney to sell immoveable property—Construction—No authority to receive purchase money*:—*Obiter.*—A mere general authority to sell immoveable property does not carry with it an implied authority to receive the purchase money.

Narasimhulu Chetti v. *Sundara Chariar* 479

———**Ratification**—*Essentials—No ratification when agent did not purport to act for principal*:-*See* HINDU LAW—JOINT FAMILY. 371

Principal and Surety—*Discharge of surety—Forbearance to sue not effecting discharge*:—A mere forbearance to sue the principal and allowing the right of action against him to be barred by limitation do not discharge the surety.

Subramania Aiyar v. *Gopala Aiyar* 633

Privy Council Practice—*Dismissal of appeal—Amendment of the decree under appeal—Absence of petition of appeal by the respondents*:—Their Lordships dismissed the appeal, but amended the decree appealed against by providing for interest subsequent to the decree in accordance with the prayer in the petition for special leave to appeal presented by the respondents,

Principal & Agent—(*Contd.*) PAGE

who did not lodge their petition of appeal as required under the Judicial Committee Rules, 1908.

Kasim Ahmed v. *Narain Chetty* 630

———*Stay of execution of decree appealed from*:—*See* C. P. C., O. 45, r. (13) (2) (*c*). 140

Provincial Small Cause Courts Act, Art. 18—*Suit relating to a trust—Suit for recovery of subscription due from trust*:—The plaintiff company sued, by its President, defendants 1 to 4 (the first defendant being described as a Dharmam and the rest as its trustees) for recovery of subscription due to the plaintiff company by the trust as a member thereof and prayed for a decree to the plaintiff company from the first defendant—the Dharmam—and alternatively, for a decree against defendants 3 to 4 in case the trust is found not liable. *Held* per *Chief Justice* and *Sankaran Nair* J. (*Benson* J. *dissentiente*) that the suit was not one relating to a trust within the meaning of Art. 18 of the Provincial Small Cause Courts Act and is. consequently, cognizable by a Court of Small Causes.

Sri Venkattachellapathy Vyavasaya Co. v. *Kanakasabapathy Pillai Dharmam* 146

———**S. 16**—*Small Cause suit tried as original suit wrongly—Appeal to Sub-Court—Revision by High Court—Practice—Procedure.* Where a Small Cause suit is tried by the Munsif on the Original Side and his decision is reversed on appeal, by the Subordinate Court, the High Court is bound to set aside the decree of the lower appellate Court, as one passed without jurisdiction. [*Parameshwaram Nambudri* v. *Vishnu Embrandiri* overruled. *Ramasami Chettiar* v. *R. G. Orr* and *Sankarbhai* v. *Sonabhai* approved.]

Kollipara Seetapaty v. *Kantipati Subbayya* 718

———**S. 25**—*Application not necessary for revision—Second appeal converted into revision petition—Contract Act, S.*70—"*Lawfully does anything for another*"—*Repair of natural stream—No contribution between riparian owners*:—S 25 of the Provincial Small Cause Courts Act does not require an application before action is taken; and the High Court can interfere in revision with the order of a Munsif in a small Cause suit without an application therefor. Where a second appeal preferred from an appellate judgment in the Small Cause suit became incompetent by reason of the judgment of the lower appellate Court, having become a nullity for want of jurisdiction, *held* there was nothing to prevent the High Court from interfering in revision with the first Court's judgment if the same be found erroneous. S. 70 of the Contract Act is not to be read so as to justify the officious interference of one man with the affairs or property of another or to impose liability in respect of services

Pr. Sm. Cause Courts Act—(*Contd.*) PAGE

which the person charged did not wish to have rendered. A natural stream is in no sense the joint property of the various riparian owners and if one repairs it of his own accord he is not entitled to any contribution from other riparian owners.

Fisher v. *Kanakasabapathy* 722

Ratification—*Principle of*:—*See* HINDU LAW—JOINT FAMILY. 371

Registration Act, Ss. 3 (1) 17, Sub-Ss. 1 and 9—*Registration of compromise decree relating to cases, if necessary*:—The provisions of the Registration Act do not apply to proper judicial proceedings whether consisting of pleadings filed by the parties or orders made by Court. [20 A 171. ref. to.] Decrees and orders are clearly outside the scope of S. 17 of the Registration Act whether they relate to leases or not; and Sub-S. 2 of S. 17 has not the effect of making decrees and orders relating to leases compulsorily registrable. Provisos are often inserted unnecessarily excepting cases which would not otherwise fall within the enactment for the purpose of removing apprehensions, and cases not otherwise clearly outside the scope of an enactment cannot be brought within it by any inference founded on the terms of the proviso. (2) That the compromise was not bad for want of registration, whether it related to the lands included in the suit or not, either under S. 17 of the Registration Act or under S. 107, T. P. A.

Natesan Chetty v. *Vengu Nachiar* 20

——S. **17**—"*Immoveable property*"—*Future rent*—*Lease of melwaram*—*Lessee in occupation under unregistered lease a trespasser where lease registrable*—*Damages*:—Future rent is a benefit to arise out of land within the meaning of the Registration Act, and consequently a lease of the melwaram right for a future year is compulsorily registrable if the value of the interest created by the document is Rupees one hundred or upwards. A person occupying land under a lease which is inadmissible in evidence for want of registration is a trespasser and consequently liable in damages to the real owner.

Mangalasami v. *Subbiah Pillay* 966

Religious Endowments Act, S. 10—*Mandatory*—*Original committee of three*—*Death of one*—*Surviving two, powers of*—*Appointment of trustee by the surviving two*—*Validity*—*Corporation, analogy to*:—Sections 7 and 10 of the Religious Endowments Act are mandatory: and where in a committee which originally consisted of three members, one died and the vacancy remained unfilled; *held* that the surviving two did not form a committee and consequently an appointment of a person as trustee by them (the remaning two) was ot an valid appointment. [*Narayana Aiyar* v. *Kuthalam Pillai* I. L. R. 22 M. 481 distinguished.] *Obiter*:—The Committee shall not consist of less than the num-

Religious Endowments Act—(*Contd.*) PAGE

ber originally appointed. Rules based on the analogy of the English law relating to corporations are not applicable to the case.

Santhalva v. *Manjanna Shetty* 814

——**Katlai manager**—*Suit for share in tasdik against temple trustee—Limitation* :—*See* LIMITATION ACT, ART. 10 .. 374

——**Suit by worshippers against temple trustees** *and their alienees for declaration that alienation is invalid and for possession—Decree, form of*:—In a suit by the worshippers of a temple to have the alienation of trust property by some of the defendants, trustees, to the other defendants declared invalid and for possession to the trustees, the proper decree to be made, if the Court be of opinion that the alienation is invalid, is to decree possession to those defendants who are trustees. And the trustees need not be referred to a separate suit for the purpose. As the trustees will hold possession not on their own behalf but only as trustees, no injunction restraining them from alienating is necessary.

Subramania Iyer v. *Nagarathna Naicker*... 151

——**Temple— Scheme suit— Jurisdiction,** *original, of High Court over scheme suit as regards mofussil temple.*—*See* C.P.C., S. 92 387

——*Trustee's powers of alienation over corpus—Trustee's position—"Necessity," meaning of*:—An alienation of temple property on a permanent lease at an unvarying rent on a fixed premium is not sustainable though it was a house site and was not producing any income before the date of alienation. [*Maharanee Shibessouree Debia* v. *Mathooranath Acharji* (13 M.I.A. 270), *Mayandi Chetti* v. *Chokkalingam Pillay* (I.L.R. 27 M. 291), *Abhiram Goswami* v. *Shyama Charan Nandi* (I.L.R. 36 c. 1003) referred to and followed] and the fact that the alienation was in favour of a charitable institution or for the supposed good of the public is irrelevant to the consideration of the question. *Obiter* :—A Shebait is in a position analogous to that of the guardian of an infant heir; and he cannot alienate the corpus of the estate except for sufficient necessity. A decree can also be passed against the corpus of the property. A necessity justifying alienation of rent and income will not be such as will justify an alienation of the corpus. Alienations of the corpus ought only to be resorted to as extreme measures in the absence of other reasonable means of providing for the needs of the temple. The requirements of daily worship, of buildings suitable for the carrying on of such worship and even of the essential festivals intended to cultivate the religious emotions of the section of the public for whose benefit the temple

Religious Endowments Act.—(*Contd.*) PAGE

is dedicated, may afford grounds for the alienation of part of the corpus. Necessity as regards an human infant and an idol may vary. [Observations in *Vidyapurna* v. *Vidyanidhi* (I.L.R. 27 M. 435, 465) commented on and doubted. *Abhiram Goswami* v. *Shyama Charan Nandi* (I.L.R. 36 c. 1003) and *Kunwar Doorganath Roy* v. *Ram Chunder Sen* (4 I. A. 52) explained.]

Nataraja Desikar v. *Palaniappa Chetty* 969

———**Trustee—Reimbursement of**—*Expenditure more than income—Items of reimbursement—Limitation* :—The right of indemnity is incident to the position of a trustee. The liability in respect of that indemnity is the first charge on the trust estate. A Shebait is entitled to be reimbursed all sums properly expended by him in the preservation of the trust estate, as for instance all moneys paid in respect of Government revenue and the like, and all moneys properly expended by him in defending his position as shebait when challenged unsuccessfully by other claimants—(1878) L.R. 7 C.D. 504 ref. to—together with moneys properly expended by him in performing the obligations imposed upon him by the trust deed. Where the income of the trust estate was calculated to be Rs. 10,000 a year and the trustee received during the whole period of his incumbency only Rs. 5,000 a year owing to the wrongful acts of respondents and consequently was driven to spend more money than the income in the reasonable expectation that on the cessation of the wrongful acts of the respondent or on the interposition of the Court the income would be sufficient to defray the expenditure incurred in the meantime in maintaining the religious observances prescribed by the founder of the trust :—*Held*—(1) That under the circumstances the trustee's personal estate was entitled to be reimbursed the amount spent out of it for the trust. (2) That a suit for reimbursement on the shebaits' death by his heirs, if brought within six years from the shebaits' death, was within time.

Peary Mohun Mukerji v. *Narendra Nath Mukerji*. [LORD MACNAGHTEN] 171

Religious office—*Release to next man entitled—Validity of*:—A renunciation of a non-hereditary religious office (*viz.*, a trusteeship of a private temple) which vested in the senior member of a family by virtue of a partition deed, in favour of the next senior, is invalid in the absence of any rule of succession to the office binding upon the members either existing before or made at the time of partition.

Sennayan v. *Sinnappan* 654

Right of suit—*Suit on decree debt obtained personally against a deceased Hindu—Second suit on decree against judgment-debtor's brothers* :—*See* HINDU LAW—JOINT FAMILY 30

PAGE

Right of use of tank—*Customary right of user—Right of access, limitation of*—A customary right to use a tank does not necessarily involve a general right of access; it may be limited to a right of access from one or more of the four sides of the tank.

Husain Rowther v. *Abubakar Rowther* 699

Specific Relief Act, Ss. 15,17—*Contract for sale of lands by some on behalf of themselves and some minors—Contract found not binding on minors—Contract indivisible—Decree, form of*:—In a suit for specific performance of a contract to sell lands by some of the defendants on their own behalf and on behalf of other defendants who were minors, if it be found that the contract is indivisible, and not binding on the minors, a decree cannot be passed compelling a conveyance of the interest of the minors as well by the major defendants on whom the contract was found binding. [*Srinivasa Reddi* v. *Sivarama Reddi* (I.L.R. 32 M. 320) distinguished]. But the plaintiff is entitled to take a conveyance by the major defendants of all their interests in the properties for the purchase money agreed upon without abatement or compensation, if he be so willing.

Subba Rani Reddi v. *Seshachallam Chetty* 328

———**S. 42**—*Declaration, suit for—Injunction no consequential relief—Plaintiff out of possession—Prayer for possession, essential—Injunction and possession—Meaning and incidents of—Shebait or trustee—Status of*:—Property in the actual possession of tenants is capable of possession by the landlord; and one person claiming to be landlord ousted by another cannot content himself with suing for a mere declaration but must sue for consequential relief in the nature of possession against his rival claimants, and if the rival claimants are entitled to joint possession with the plaintiff he must sue for joint possession with them. A plaintiff, whether a temple trustee or not, cannot sue for a mere declaration when he is entitled to consequential relief. Injunction is only a discretionary relief, not the appropriate consequential relief for a plaintiff out of possession. *Obiter*:—Possession is positive and connotes acts of dealing with the property and sometimes beneficial enjoyment, but an injunction which restrains another from interference is negative. Possession and right of suit are vested in the shebait or trustee and not in the idol.

Rathnasabapathi Pillai v. *Ramasami Aiyar* 301

———**S. 42**—*Hindu joint family—Suit for declaration that decree and sale on a mortgage not binding without prayer for partition—Bar*:—A suit by a co-parcener in a Hindu joint family for a declaration that a decree obtained on a mortgage executed by his father and sale thereon were not binding on his share on

Specific Relief Act—(*Contd.*) PAGE

the ground of illegality or immorality of the father, the executant of the deed, is barred by S. 42 of the Specific Relief Act for want of a prayer for partition. [*Chinna Sanyasi* v. *Suriya* (I.L.R. 5 M. 196), *Subramania Chettiar* v. *Padmanabha Chettiar* (I.L.R. 19 M. 267) referred to]

Venkatrayudu v. *Venkatarayudu* 759

———**S. 42**—*Suit for declaration that mortgage decree not binding on plaintiff's share—Limitation* :—A suit for a declaration that a mortgage-decree is not binding on plaintiff's share of the property if brought within 6 years from the date of the decree, is not barred by limitation; nor is such a suit barred by S. 42 of the Specific Relief Act by reason of the want of a prayer for a general partition even though the sharers have been impleaded as parties

Velammal v. *Vavammal* 349

Statute—Construction :—Per *Wallis* J.:—Where the language of a section is clear and unambiguous, Courts are not at liberty to speculate as to the reasons which led the Legislature to alter that language and as a result of such speculation, to put a forced and unnatural construction upon the existing section.

Abu Bucker v. *The Secretary of State* 283

———**Proviso**—*Construction* .—Provisos are often inserted unnecessarily excepting cases which would not otherwise fall within the enactment for the purpose of removing apprehensions, and cases not otherwise clearly outside the scope of an enactment cannot be brought within it by any inference founded on the terms of the provisos.

Natesan Chetti v. *Vengu Nachiar* 20

Succession Act—S. 93 (ill.)—*Joint tenancy, principle of—Applicable to gifts*:—*See Gabriel* v. *Innas* 377

———**S. 191**—*Dealings with property by heirs before grant of letters of administration* :—The provision in the Succession Act as to the Letters of Administration relating back does not vest the property in the administrator before the grant of administration; and, consequently, until the grant of Letters of Administration the dealings of the heirs with regard to the property are valid and binding on the administration, especially when the dealing were after Act VII of 1901 had made Ss. 190 and 239 inapplicable to Native Christians.

Antony Cruz Gonzalves v. *Mathis Boopalrayan* 984

Suits Valuation Act, S. 11—"*Prejudicially affected the disposal of the suit on the merits*"—*C. P. C. (XIV of* 1882), *S.* 578—*Jurisdiction of Civil Court—Suit for removal of trustee for*

Suits Valuation Act— (*Contd.*) PAGE

breach of trust—Forum:—In a suit for removal of a trustee for breach of trust, the value of the trust property is the guide for the determination of the forum. The effect of S. 11 of the Suits Valuation Act is simply to place over-valuation or under-valuation of suits on the same footing with other irregularities contemplated by S. 578, C. P. C. (XIV of 1882), except that the objection must be taken either in the Court of first instance or in the lower appellate Court; and the mere change in forum consequent on an under-valuation cannot of itself be treated as prejudicially affecting the disposal of the suit on the merits within the meaning of S. 11 of the Suits Valuation Act.

Raghava Chariar v. *Raghava Chariar* 726

Superstitious uses—*Fatehas, performance of:—See* MAHOMEDAN LAW 254

Tasdik—*Suit for share in, by Katlai manager—Limitation:—See* LIMITATION ACT, S. 10 374

Torts—*Breach of promise—Action for procuring breach—Justification, plea of—Malice, proof of—Parent and child:*—In an action for procuring a breach of promise of marriage against the mother of the promisor, malice is not the gist of the action, but proof of malice will be a sufficient answer to a plea of justification. A parent or guardian may well advise his son or daughter to break off an improvident engagement to an unworthy suitor, but if he does so maliciously and by misrepresentations, he makes himself liable in damages.

Miss Colquhoun v. *Mrs. Smithers* 734

———*Highway—Procession—Right to go in—Cause of action—Special damage when not necessary—Magisterial prohibitory order, good cause of action:*—Magisterial orders prohibiting people from going in procession in public streets are, without special damage, a cause of action for the sustainability of suits by a member of the public for a declaration and injunction with regard to their right to go in procession.

Muthayya v. *Sodalai Muthu* 119

———**Special damage**—*Obstruction of view to a curusady—No special damage to worshipper—No right of suit:*—A possible obstruction to a procession is no special damage. The plaintiffs, certain of the worshippers of St. Jacob's Church, brought a suit for removing certain constructions made by defendants on a part of the public road in front of their church, on the ground of obstruction of the plaintiffs' view of a *curusady*: *Held*—That the plaintiffs have no cause of action and that the suit was not sustainable.

Costha v. *Savarimuthu* 367

PAGE

Transfer of Property Act, S. 4—*Not applicable to gifts.* See—
Gabriel v. *Innas* 377

———**S. 6 (d)**—*Right to future maintenance—Alienability—Contract Act, S. 16—Undue influence—"Position to dominate"—Cases before amendment—Hard and unconscionable bargain—Advice—Relations* :—A right to future maintenance of a Hindu widow made payable by agreement or decree is alienable. A right to future maintenance is not an interest in property restricted in its enjoyment to the owner personally within the meaning of Cl. (*d*) of S. 6, T. P A. The word "relations" in S. 16 of the Contract Act means not only the personal relations but the circumstances in which the contract was entered into. The fact that the bargain was a hard one is no ground for relief; and urgent need of money on the part of the borrower does not of itself place the lender in a position to dominate the will within the meaning of S. 16 of the Contract Act. The fact that the borrower had the advice of a Vakil while borrowing does not preclude the borrower from asking for relief or the Court from exercising the jurisdiction given by S. 19-A of the Contract Act. Cases decided before the amendment can be looked into as throwing light on the question as to what circumstances will give rise to relations which place one party to a contract in a position to dominate the will of the other party.

Annapurni Nachiar v. *Swaminatha Chettiar* 785

———**S. 53—Fraudulent transfer**—*Conversion of land into cash to defeat creditors—Transferee's good faith—Onus—Discharge of mortgage with purchase-money—Lien of transferee* :—A transfer ot immoveable property effected by the vendors with the intention of putting their property beyond the reach of creditors by converting land into cash is voidable under S. 53 of the Transfer of Property Act, but the transferee will be entitled to a charge on the property to the extent to which the purchase-money went towards the discharge of debts secured on the property. Per *Wallis* J. :—A sale effected with the mere object of preferring some of several creditors is not voidable under S. 53 of the Transfer of Property Act. The onus of proving good faith and consideration is on the transferee. .. ..

Palamalai Mudaliar v. *The South Indian Export Company, Ltd.* 212

———**S. 73**—*Substitution of securities—Mortgage of undivided share by co-parcener in Hindu undivided family prior to partition*:—A mortgagee of an undivided share in the common property or of one of the joint properties before partition from one of the sharers is only entitled to proceed against the substi-

Transfer of Property Act—(*Contd.*) PAGE

tuted property which falls to the share of the mortgagor at the partition unless the partition has been unfair or in fraud of the mortgagee. [*Lakshman* v. *Gopal* (23 B. 385) distinguished.]

Muthia Raja v. *Appala Raja* 393

———**S. 78**—*Prior mortgagee allowing title deeds to be with mortgagor—Priority of subsequent mortgagee*:—The circumstance that a prior mortgagee leaves the title deeds with the mortgagor would, if unexplained, justify the postponement of his security to the security of another created by deposit of the deeds.

Maung Tha Huyin v. *Maung Myasu* (LORD MACNAGHTEN). 153

———**S. 78**—*Prioity of mortgages—Gross negligence—Consideration*:—The same importance does not attach to the possession of title deeds in the mofussil as in the city of Madras and facility in inspecting the registry provided by the registration law should be taken into account in determining whether there was gross negligence in the prior encumbrancer.

Chettiappa Chettiar v. *Periasami Thevan* 979

———**S. 100—Charge**—*General and specific language—Wide and indefinite language*:—*See* DEED—CONSTRUCTION. .. 407

———**S. 105**—*Lease—Essentials of—Writing not signed by lessor, if valid—Evidentiary value of writing*:—A writing evidencing a lease can be used in proof of the oral letting accompanied with delivery of possession, even though the writing does not amount to a lease, not having been signed by the transferor. Per *Krishnaswami Aiyar* J:—Whether a written lease to be valid should necessarily be signed by the lessor?

Chinnaswami Padayachi v. *Avayambal* 298

———**S. 107**—*Transferor and transferee—Delivery of possession—Essentials*:—In India attornment by the tenants liable to pay rent and receipt of rent from them are not necessary to give the transferee.possession of the rent even where the transferor has possession to give; and where the transferor has no possession to give, all that he need do is to send a notice to the lessee to pay the rent to the transferee. There was sufficient delivery of posssesion in the case by plaintiff's giving notice to the lessees in possession to pay rent to the defendant's father.

Natesan Chetti v. *Vengu Nachiar* 20

———**Ss. 112, Cl. 111 (g)** —*Ejectment suit—Lease before the Act—Concurrent suit for rent—No waiver of forfeiture—"Act showing intention to determine lease"*:—A forfeiture is incurred if the landlord's title is denied. It is not necessary that the denial of the landlord's title should be accompanied by an assertion that the title is either in the defendant or some third person. Where a lease is determined by the plaintiff's election to treat the lease as at an end, a claim for rent prosecuted along

Transfer of Property Act—*(Contd.)* PAGE

with a prayer for ejectment could not negative the plaintiffs' title to seek ejectment. In the cases of leases before the Transfer of Property Act, the institution of the action for ejectment on the ground of forfeiture would itself amount to the manifesting of the intention to determine the tenancy, though in the cases of leases after the Act, it is impossible to treat the institution of the suit as itself the act necessary for determining the tenancy. [*Venkataramana Bhatta* v. *Gundaraya* (I.L.R. 31 M. 403.)]

Padmanabhaya v. *Ranga* 930

Trustee—*Reimbursement—Suit by heirs of Shebait—Limitation* :—*See* Religious Endowments 171

Vakil—*Right to terminate suit by oath of opponent—None, if not specially authorized*:—A vakil, unless specially empowered, cannot bring a suit to a close by offering to be bound by the oath of the opposite party in a particular form. [*Sadashiv Rayagi* v. *Maruthi Vithal* (I.L.R. 14 B. 455) followed.]

Ramasawmi v. *Ramasawmi* 386

Vendors and purchasers—*Deposit—Breach of contract—Forfeiture* :—*See* Contract Act, S. 64 230

———*Sale of one of two houses belonging to the same person—Projection in a house—Right of the purchaser of the house to the space above and below*:—Where two houses belonged to one owner and a part of one projected over the other and the two houses were sold to different vendees: *Held* that the projection belonged to the purchaser of the house of which it formed part, but that the purchaser was not entitled to the space above and below the projection [*Corbet* v. *Hill* (L.R. 9 Eq. 671) followed] and that the owner of the other house was not entitled to raise a construction resting on the projection, such a construction being a trespass.

Saminatha Sastrigal v. *Pathma Bibi* 716

Waste lands—*Ownership in—Crown, rights of*:—*See* Crown .. 66

Water-course—*Possessory title*:—*See* Possessory Title

Will—*Construction—"Ekopithu"—Nature of estate taken* :—A testator bequeathed the plaint properties to one *R* and *V* and his adopted son *K* to be enjoyed by them from generation to generation "*ekopithu*", *i.e.*, "harmoniously." There was also a gift in the same will of an absolute estate in certain other property to his adopted son *K*. *Held*—on a construction of the will—that the estate was to be enjoyed by the three devisees and their descendants without partition or alienation and that they were not to take as tenants-in-common.

Authipurnam v. *Appasawmi* 99

Will—(*Contd.*) PAGE

———*Executor—Estoppel—Adverse title to will*:—An executor under a will who has accepted the office of executor and has acted as such. is estopped thereby from setting up an adverse title to the property disposed of by the will.

Munisami v. *Maruthammal* 687

———*Mutual and joint wills—Revocability by one after the death of the other—"Advantage"—Meaning of—Estoppel* :—Two persons may agree to make mutual wills which remain revocable during the joint lives of either with notice to the other, but become irrevocable after the death of one of them if the survivor had taken advantage of the provisions made by the other. The advantage so taken should be one obtained by the survivor *under* the provisions of the will. Per *Krishnaswami Aiyar* J.—It is not competent to any person to set up that the will is irrevocable in the absence of a plea that there was an arrangement between the two persons who made their wills that each should stand by the other. A husband and his wife made, by means of a single testamentary instrument, dispositions of their separate properties in favour of their daughters and a daughter's son. The husband died ; and subsequently the wife made a gift to her daughter of her property disposed of by her already in the joint will in favour of the plaintiff, her grandson. The dispositions were to take effect under the will only after the death of both the husband and the wife. *Held* that the will of the lady was revocable and that the advantage that she derived by inheriting her husband's estate after his death not being one derived under the will but under the ordinary law of inheritance governing the parties, she was not precluded from revoking the will by a subsequent disposition.

Minakshi Ammal v. *Visvanatha Aiyar* 339

———*Settlement—Deed—Construction—Tests—Form—Registration—Future tense, use of—Life estate, reservation of*:—A deed in form purported to be an agreement and was registered. It contained no clause of revocation and declared that the executant's future debts will not be binding on the properties; and the instrument went on toprovide 'after my lifetime both of you' (wife and daugh-in-law) " shall not only get the right due to me in the said lands but also divide and enjoy in equal shares the income." *Held* :—That the instrument was a settlement and not a will. One of the invariable tests in determining whether an instrument is testamentary or not is to see whether it is revocable. The use of the future tense is not a conclusive test when the intention is otherwise clear; nor even the reservation of a life estate will render a settlement the less so. The form of the instrument and the fact that it was registered, though matters to be taken into ac-

Will—(*Contd.*) PAGE

count, are not in themselves conclusive as to the determination of the character of the instrument.

Rajammal v. *Authiammal* 519

Witness—*Citing opponent as* :—The unworthy effort of the advocate on each side in India is to force his opponent to produce his own client in order that he himself may have the opportunity of cross-examining that client. It is a vicious practice, unworthy of a high-toned or reputable system of advocacy. It must embarrass and perplex judicial investigation, and, it is to to be feared, too often enables fraud, falsehood or chicane to baffle justice.

Lal Kumar v. *Chiranji Mussammat Lal.* [LORD ATKINSON.] 182

Words :—*General estate* :— *See* LIMITATION ACT, Art. 36 633

———**Company varu** :—*See* Cr. P. C., S. 235 270

———**Charge** :—*See* Cr. P. C., S. 437 137

———**Meanings of** :—NEGOTIABLE INSTRUMENTS ACT .. 144

Zemindar—*Permanent tenant—Underground rights* :—Where the title of the zemindar to a village as part of his zemindari before the creation of a permanent tenancy is established, he must be presumed to be the owner of the underground rights thereto appertaining, in the absence of evidence that he ever parted with them. [*Sriram Chakravarthi* v. *Hari Narain Singh Deo* (I.L.R. 33 C. 541) reversed.]

Narayan Singh v. *Sriram Chakravarthi.* 569

UNIVERSITY LAW COLLEGE LIBRARY.

ANANDA PRESS, MADRAS.

UNIVERSITY LIBRARY. LAW COLLEGE.

NOTES OF RECENT CASES.

Sankaran Nair J.
1900, *December* 20. } Crl. R. C. 541 of 1909.

Crl. P. C.—Charge—Alteration of—Time of—Ss. 379, 426, *I. P. C.—Waiver—Conviction—Illegality.*

The accused was charged with and tried for an offence under S. 379, I. P. C. After the close of the arguments the Magistrate recorded that he altered the charge to one under S. 426, I. P. C., though there was no such alteration on record, and that the accused's pleader who was asked to cross-examine the witnesses waived his right to do so. The conviction was under S. 426, I. P. C. *Held* that the conviction was illegal as there was no alteration in fact, as the charge was sought to be altered at the close of the proceedings, and as the offence of mischief under S. 426, I. P. C., cannot be said to be a minor ingredient of one under S. 379, I. P. C.

P. Sambanda Mudaliar for petitioner.

The Crown Prosecutor (*John Adam*) for respondent.

Chief Justice
Krishnaswamy Aiyar J.
1909, *December* 21. } O. S. A. 43 of 1908.

Ss. 370, 371, *C. P. C.—Insolvency pending action—No prosecution by Official Assignee—Abatement—No locus standi for the insolvent.*

Pending a suit the plaintiff became insolvent. The suit was then adjourned for three months. At the end of that time neither the plaintiff nor the Official Assignee appeared on the day of hearing and the suit was dismissed for default. On an appeal filed by the insolvent complaining that as the Official Assignee neither *neglected* nor *refused* to continue the suit within the meaning of S. 370, C. P. C., after any notice to him he (the insolvent) was entitled to continue the suit as having an interest in the possible surplus after distribution.

Held that as on insolvency the Official Assignee alone was entitled to continue the suit the insolvent had no *locus standi*.

T. Rangachari and *P. Duraisami Aiyangar* for appellant.

T. Rajagopalachari for respondent.

Chief Justice
Krishnasawmy Aiyar J.
1910, *January* 5.

S. A. 683 of 1907.

Payment to one of several joint mortgagees—Not good payment.

Payment to one of several joint mortgagees is not a good payment so as to discharge the mortgage in respect of all the mortgagees.

T. Rangachariar for appellant.

P. R. Sundara Aiyar and *K.N. Aiya* for respondent.

Miller J.
Krishnaswamy Aiyar J.
1910, *January* 9.

S. A. 656 of 1906.

Limitation Act (*IX of* 1908) *Art.* 177.

When in a second appeal the respondent died before the coming into force of the new Limitation Act: *Held*, nevertheless, that the new Act applied to the application to bring on record the legal representative of such deceased respondent.

The suit was by the uralans of a temple for injunction and damages; they got a decree for both injunction and damages. The person dead was one of the uralans. (The uralans were hereditary uralans).

Held: that the appeal could not go on as against the others and ought to be dismissed.

Kunjunni Nair for appellant.

C. V. Anantakrishna Aiyar for respondents.

NOTES OF RECENT CASES.

Chief Justice.
Krishnaswamy Aiyar J. } S. A. 1060 of 1907.
1910, *January* 25.

Hindu Law—Bandhus—Mother's sister's son and mother's brother's son.

Under the Mitakshara Law, as it prevails in the Southern Presidency, the mother's sister's son is a preferable heir to the mother's brother's son.

The Advocate-General (P. S. Sivaswamy Aiyar) for appellant.

T. R. Ramachandra Aiyar and *T. R. Krishnasamy Aiyar* for respondents.

Miller J.
Sankaran Nair J. } C. M. P. 1124 of 1909.
1910, *January* 26.

Limitation Act (IX of 1908) *Arts.* 176, 177,—*Civil Revision Petitions.*

Arts. 176 and 177 of the Limitation Act extend to applications to bring on record the legal representatives of a deceased petitioner or respondent in a Revision Petition under S. 115, C. P. C., or under S. 25 of the Provincial Small Cause Courts Act.

T. V. Muthukrishna Aiyar for petitioner.

P. Nagabhushanam for respondent.

Benson J.
Krishnaswamy Aiyar J. } S. A. 737 of 1909.
1910, *January* 27.

Inam in the name of some persons for support of mosque—Inalienable privately or through Court for private debts—Trustees—All must join in suit.

Unlike Inams granted to individuals as remuneration for services in a mosque, Inams, though standing in the names of individuals, given for the support of a mosque, are not alienable either privately or through Court for the personal debts of those individuals.

In a suit brought on behalf of a trust all the trustees must be parties. [Some of the trustees who were not parties were ordered to be joined as parties in second appeal.]

N. Rajagopalachari for appellant.

T. M. Krishnaswami Aiyar for respondent.

[FULL BENCH.]

Chief Justice
Miller J.
Sankaran Nair J.
1910, *January* 28.

C. M. P. 2103 of 1909.

Stamp Act (II of 1899), *S.* 61, *Cl.* (1)—*Order of a Judge of the High Court on the Original Side, final.*

An order of a Judge of the High Court, sitting on the Original Side of the High Court, admitting a document as sufficiently stamped is final and not open to revision by the High Court on its Appellate Side at the instance of the Collector under S. 61, Cl. (1) of the Stamp Act (II of 1899). That section contemplates a case where the Appellate Court is distinct from the Original Court.

The Advocate-General (P. S. Sivaswami Aiyar) for the Crown.

M. A. Thirunarayanachariar for respondent.

Chief Justice
Munro J.
1910, *January* 28.

A. S. 109 of 1908.

Maintenance decree—Mortgage of—Validity of.

There is nothing to prevent a lady who gets a maintenance decree from mortgaging her rights thereunder, though S. 266, C.P.C., prohibits its attachment.

The Advocate-General (P. S. Sivaswami Aiyar) for appellant.

K. Srinivasa Aiyangar for respondent.

Benson J.
Krishnaswamy Aiyar J.
1910 *January* 31.

S. A. 1195 of 1907.

Hindu Law—Mortgage by father—No proof of necessity or family benefit—No issue upon—Mortgagee to prove necessity.

In a suit by an assignee from a mortgagee against a mortgagor and his sons who formed a joint Hindu family where there was no antecedent debt, the plaintiff has to prove family necessity to get a *mortgage* decree against the sons; the fact that

there was no issue on the point of necessity does not dispense with the plaintiff's obligation to prove the same.

T. M. Krishnaswami Aiyar for appellant.

V. Purushotham Aiyar for respondent.

Benson J.
Krishnaswamy Aiyar J. } S. A. 1158 of 1907.
1910, *January* 31.

Landlord and Tenant—Transfer of Property Act, S. 114—*Equitable relief—Defences set up and acts proved may disentitle.*

S. 114, T.P.A., may well be taken as laying down the correct rule even as regards cases not coming within the Act.

It is competent to the Court to refuse relief against forfeiture, having regard to the defences set up by, and acts proved of the defendants.

J. L. Rosario for appellant.

T. R. Krishnaswamy Aiyar for respondent.

Miller J.
Sankaran Nair J. } Ap. 51 of 1904.
1910, *February* 1.

Reciting Stothrapatam, Suit for—Office—Cognizable by Civil Courts.

In a suit by Thathachariars of Conjeevarem for a declaration of their right to recite Stothrapatams of their Alwars and Acharyas in connection with the festivals and processions in the Conjeevarem Vishnu Temple, their Lordships held that reciting Stothrapattam can be an office just like reciting Vedas and Prabandams and that a suit for such an office was one cognisable by Civil Courts.

[The office in question was proved also to have no emoluments.— Ed.]

T. R. Ramachandra Aiyar and *C. Narasimhachari* for appellants.

P. R. Sundara Aiyar, T. Narasimha Aiyangar and *Krishnaswami Aiyangar* for respondents.

Benson J.
Krishnaswamy Aiyar J. } S. A. 1592 & 1595 of 1907.
1910, *February*

Estates Land Act, S. 6—*Occupancy rights under, recognised in second appeal.*

In the above second appeals brought by the plaintiff-appellant for ejectment, their Lordships dismissed the suits, holding that the tenants who were in occupancy of the lands at the date of the Estates Land Act had their right to possession protected by S. 6 of the Act.

V. Ramesam for appellant.

T. Prakasam for respondents.

Miller J.
Sankaran Nair J. } Cr. App. 626, 629 & 649 of 1909.
1910, *February* 1.

I. P. C., S. 71—*I.P.C., Ss.* 147 *and* 332 (*read with S.* 149)—*Consecutive sentences under, not legal.*

Having regard to S. 71, I. P. C., it is not legal to pass consecutive sentences under Ss. 147 and 332 (read with S. 149) I.P.C.

P. C. Lobo for accused 1 to 11.

J. Adam and *K. N. Aiyah* for accused 12.

The Public Prosecutor (*C. F. Napier*) *contra.*

Benson J.
Krishnaswamy Aiyar J. } S. A. 159 of 1908.
1910, *February* 2.

Hindu Law—Mortgage by father—Mere recital of receipt of consideration, no evidence against son—Evidence Act, S. 32, *Cl.* (*c*).

A mere recital of receipt of consideration in a mortgage bond executed by the father is no evidence against the son; but it is admissible against him after the father's death under S. 32, Cl. (*c*) as an admission against interest.

A. Krishnaswami Aiyar for appellant.

T. Natesa Aiyar for respondent.

NOTES OF RECENT CASES.

Miller J.
Munro J.
1910, *January* 11.
A. S. 187 of 1904.

Hindu Law—No liability to pay one's undivided brother's personal debts—S. 244, *C.P.C.*

Under the Hindu Law a person is under no liability to pay the personal debts of his deceased undivided brother.

No *suit* can lie against the widow of a deceased *judgment-debtor* for enforcing the judgment-debt on the ground that she is in possession of her husband's property, S. 244, C.P.C., being a bar.

P. R. Sundara Aiyar and *C. V. Anantakrishna Aiyar* for appellants.

S. Srinivasa Aiyangar, S. Srinivasa Aiyar and *G. S. Ramachandra Aiyar* for respondents.

Miller J.
Munro J.
1910, *January* 11.
A. S. 188 of 1904.

S. 43, *C.P.C.—S.* 43, *Contract Act.*

A previous suit having been brought against certain persons who were alleged to be some of the partners of a partnership which was declared by the decree to have been dissolved as from its date and directed payment of a sum of money, a second suit for an account and share of the profits of the dissolved partnership does not lie against a person or persons who were parties to the former decree, and with them as parties a second suit against other partners also for dissolution does not lie.

P. R. Sundara Aiyar and *C. V. Anantakrishna Aiyar* for appellants.

S. Srinivasa Aiyangar and *S. Srinivasa Aiyar* for respondents.

Chief Justice.
Munro J.
1910, *January* 12.
A. S. 183 & 184 of 1907.

Suit for partial partition—Maintainability of—A question of fact in each case.

A suit for partition by a transferee from a tenant-in-common of his share in some of the properties held in common, in respect of those properties alone, is not to be dismissed on the ground that it is one for partial partition when there is no special hardship or inconvenience in making a partition of those properties alone. Whether a suit for partial partition is bad is a question which must depend upon the facts of each case and is not one capable of a general answer.

P. R. Sundara Aiyar and *P. Nagabhushanam* for appellant.

The Advocate General (*P. S. Sivaswami Aiyar*) *V. Ramesam* and *T. V. Narayanaiah* for respondent.

Munro J.
Rahim J.
1910, *February* 2. } A. S. 212 of 1905.

Limitation Act, *Art.* 125--*Suit for declaration by adopted son.*

A suit by an adopted son for declaration that an alienation by the adoptive mother before his adoption is invalid after the lifetime of the adoptive mother as not being justified by necessity is governed by Art. 125 of the Limitation Act and is barred if brought after 12 years of the date of alienation, though it is not more than 6 years from the date of adoption.

T. R. Ramachandra Aiyar and *V. Ramesam* for appellant.

P. Nagabhushanam for respondent.

Benson J.
Krishnaswamy Aiyar J.
1910, *February* 2. } S. A. 1247 of 1907.

Evidence—Unregistered partition deed—Admissibility of.

Where the terms of a partition have been settled by an unregistered partition deed, such deed is inadmissible in evidence to prove a covenant contained therein, *viz.*, that for the debts contracted by every one of the parties thereto the properties that fell to his share alone will be liable, as such a covenant affects immoveable property.

T. V. Gopalaswami Mudaliar for appellant.

R. Kuppusami Aiyar for respondent.

Chief Justice.
Krishnaswamy Aiyar J.
1910, *February* 2. } S. A. 37 of 1907.

Adverse possession—Grazing cattle on Government waste land.

Grazing cattle on Government waste land or relinquished putta land which has been lying waste is not adverse to the

Government so as to confer an absolute title or even a right of pasturage as against the Government.

A. Krishnaswami Aiyar for *P. R. Sundara Aiyar* for appellant.

K. Bhashyam Aiyangar for respondent.

Miller J.
Krishnaswamy Aiyar J. } S. A. 888 of 1907.
1910, *February* 2.

Hindu Law—Illegitimate sons, offspring of adulterous intercourse—Right of maintenance against members of the undivided family.

Illegitimate sons, though born of an adulterous intercourse, are entitled to maintenance out of the family property of their Sudra putative father in the hands of his surviving co-parceners.

T. Rangachariar for appellant.

K. N. Aiya for respondent.

Miller J.
Munro J. } A. S. 113. of 1905.
1910, *February* 2.

Hindu Law—Compromise by widow—Not alienation—Adverse possession continues notwithstanding—C. P. C., Ss. 13 *and* 244.

A compromise is not an alienation so as to give a fresh starting point of limitation to the reversioner.

A decree-holder in a suit for partition (who was out of possession) died, and his widow entered into a compromise by which she agreed to take certain properties in satisfaction of the partition decree. After her death, her daughter sued to recover the share decreed to her father on the ground that the compromise was not beneficial to the estate.

Held: The possession of the defendant which was adverse continued to be so against the estate unaffected by the fact that there was a compromise; and therefore the claim of the plaintiff was barred more than twelve years having expired from the commencement of the adverse possession.

Held: also that the second suit for partition of $\frac{1}{3}$ or share awarded by the compromise decree is barred by Ss. 13 and 244 C. P. C.

The Advocate-General (P. S. Sivaswami Aiyar) L. A. Govindaraghava Iyer and *T. R. Venkatrama Sastri* for appellant.

P. R. Sundara Aiyar, P. R. Ganapathi Aiyar and *S. Padmanatha Aiyangar* for respondents.

Benson J.
Krishnaswami Aiyar J. } S. A. 1468 of 1907.
1910, *February* 2 & 3.

Hindu Law—Partition.

Plaintiffs brought a suit for partition against defendants 1-7, and 11-14. Both the Courts gave them a decree. Defendants 1-4, parties in possession of the properties, appealed, making plaintiffs alone respondents without impleading defendants 5, 6, 7 and 11-14, who would be entitled to a 3rd share.

Held:—In a suit for partition relief cannot be given to one sharer without all the other sharers being brought before the Court. Hence appeal fails. Exclusion cannot be presumed from mere possession. Mere non-participation is not proof of exclusion.' [*Sellan* v. *Chinniah*[1], *Dhooyeti Subbaraya* v. *Dhooyety Venkayya* [2] followed.]

G. S. Ramachandra Aiyar for *T. R Ramachandra Aiyar* for appellant.

C. V. Ananthakrishna Aiyar for respondent.

Miller J.
Sankaran Nair J. } C. M. S. A. 29 of 1909 and C.M.P. 962 of 1909.
1910, *February* 3.

High Court's decree fixing time for payment in a suit for specific performance—No power in the lower Courts to extend time—S. 148, C.P.C.—Deduction of costs of execution petition.

Where in a suit for specific performance of a sale the High Court fixed a time for the decree-holder paying the amount of the decree, the lower Courts have no power to extend the time so prescribed. The decree-holder is not entitled to deduct the costs of the execution application from the amount payable by him and pay the rest. In such a case time fixed in the decree cannot be said to be one prescribed or allowed by the Code (C.P.C.) within the meaning of S. 148 so as to enable the High Court to extend the same.

N. Rajagopalachari for appellant.

T. R. Venkatarama Sastri and *V. Purushotham Aiyar* for respondent.

---

1. (1901) I. L. R. 24 M. 441.
2. (1906) I. L. R. 30 M-201

Miller J.
Sankaran Nair J. } S. A. 851 of 1907.
1910, *February* 3.

Receiver—Powers of—Can confer occupancy rights—Zamindari where tenants have occupancy rights.

It is competent to a receiver of a Zamindary estate to confer occupancy rights on tenants introduced into the land by him when the tenants in the Zamindary have occupancy rights.

C. R. Tiruvenkatachariar for appellant.

S. Swaminathan for respondent.

Munro J.
Abdur Rahim J. } A.S. 39 of 1906.
1910, *February* 3.

Suit for declaration of invalidity of sale—Not maintainable when partition can be had.

A suit by the son for a mere declaration that a sale in execution of a decree on a mortgage executed by the father is not binding on his share is not sustainable by reason of S. 42 of the Specific Relief Act as he can seek for consequential relief, *viz.*, partition.

P. C. Lobo and K. P. Madhava Rao for appellant.

T. R. Venkatrama Sastri for *P. Narayanamurthi* for respondent.

Benson J.
Rahim J. } S. A. 852 of 1906
1910, *February* 14.

Muhammadan Law—Wakf—Fateha - Distribution among various objects—Partial invalidity of disposition—Income available for charity enhanced.

A wakf deed executed by a Muhammadan under circumstances which raised no suspicion as to the good faith of the transaction provided that a third of the income should be accumulated and invested in the purchase of lands for the purposes of the wakf; out of the balance, the 2 mutwallis, being the 2 sons of the settlor, should be paid at the rate of Rs. 10 each per mensem, Fateha of the settlor and his ancestors, and feeding during the Ramazan,&c., should be performed, and the balance after meeting those expenses should be distributed among the descendants of the settlor, reserving for the settlor's descendants right to call for accounts, &c. *Held* :—

(1) Fateha for one's self and one's ancestors is not a superstitious use, and therefore a wakf could validly be made for its performance.

(2) In the absence of any provision as to the extent of the expenses to be incurred for Fatia, &c., and the amount to be distributed amongst the descendants, the income should be equally distributed between the two objects.

(3) The provision in favour of the settlor's descendants is clearly bad under the rulings of the Privy Council.

(4) The portion thus undisposed of would go to swell the amount available for charity.

S. Srinivasa Aiyangar and *A. Nilakanta Aiyar* for appellant.

L. A. Govindaraghava Aiyar and *B. Sitarama Rao* for *P. R. Sundara Aiyar* for respondent.

Munro J.
Sankaran Nair J.
1910, *February* 15.

C.M.A. 253 of 1909.

Succession Certificate Act, S. 19—*Appeal*—"*Order granting or refusing*"—*Appeal against order to furnish security.*

No appeal lies from an order directing security to be given by the applicant at the instance of the applicant himself.

T. Rangaramanuja Chariar for appellant.

S. Srinivas Aiyar for respondent.

Miller J.
Munro J.
1910, *February* 15.

Ap. 66 of 1905, 64 of 1907, 129 of 1907, 65 and 134 of 1907, 35 and 36 of 1905, 40 and 41 of 1905, S. A. 237 of 907.

Madras Act III of 1905—*Rivers, beds, channels, waters, etc.*—*Ownership of*—*Right to water for second crop*—*Easements*—*Act VII of* 1865—*Liability to pay water cess when no engagement*—*Onus.*

All rivers, their beds, all channels and all waters belong by virtue of Act III of 1905 to Government unless the person claiming them can prove them to be his property by grant or otherwise. Any Zemindar or Inamdar wishing to use such water is liable, though he may have a right of easement to the accustomed quantity of water, to pay water-cess under Act VII of 1865 unless he can show any engagement with the Government to entitle him to use the water free of charge. If such proprietor is unable to show that he was so entitled with reference to particular lands or any particular crop, he is liable to pay water-cess in respect of the particular lands or crop in question.

T. R. Ramachandra Aiyar, P. R. Srinivasa Aiyangar, V. Ramesam, H. Suryanarayaniah and *T. V. Narayaniah* for Zemindar and Inamdars.

The Advocate-General (*P. S. Sivaswami Aiyar*) and *P. R. Sundara Aiyar* for Government.

Miller J.
1910, *February* 16. } C. R. P. 289 of 1909.

Contract Act, S. 25, *Cl.* 3—"*Promise to pay*"—*Statement of account.*

Bare statement of account without more, if made beyond the expiry of the period of limitation cannot be a "promise to pay a time-barred debt" within the meaning of S. 25, Cl. 3, of the Contract Act.

S. Srinivasa Aiyar for petitioner.

A. S. Balasubramanya Aiyar for respondent.

Miller J.
1910, *February* 17. } Cr. R. C. 599 of 1909.

Cr. P.C., Ss. 367, 424—*Judgment of the appellate Court.*

The judgment of the appellate Court in a criminal case must comply with the provisions of S. 367, Cr.P.C., *vide* S. 424, Cr.P.C. It is not sufficient for the appellate Magistrate merely to say that he agrees in the conclusions arrived at by the lower Court for the reasons contained in the judgment of the lower Court. [*Jamait Mullick* v. *Emperor*[1] followed].

S. Swaminathan for appellant.

The Public Prosecutor (*C. F. Napier*) contra.

Benson J.
Krishnaswami Aiyar J.
1910, *February* 3. } S. A. 1469 of 1907.

Mortgage of future rents—"*Immoveable property*"—*S.* 17, *Registration Act.*

A mortgage by a Melwaramdar of future rents due to him from the ryots of the village is mortgage of immoveable property and requires registration.

The Advocate General (*P. S. Sivaswami Aiyar*) and *T. R. Venkatrama Shastri* for appellant.

C. V. Anantakrishnaiyar for *S. Srinivasa Aiyangar* for respondent.

---

1. (1907) I. L. R. 35 C. 138.

Benson J.
Krishnasamy Aiyar J.
1910, *February* 24.
S. A. 737 of 1908.

Order permitting withdrawal of suit with liberty to sue—Order as to costs—Payment not condition precedent unless directed to be so.

An order permitting the plaintiff to withdraw the suit with liberty to sue and directing him to pay the costs of the defendant, without more, is not an order which makes the payment of costs a condition precedent to the filing of the suit. S. A. 689 of 1907 followed.

C. V. Ananthakrishna Aiyar for appellants.

K. Naraina Row for respondents.

Chief Justice.
Abdur Rahim J.
1910, *February* 22.
A. S. 65 of 1906.

Religious Endowment—Committee—Acts during a vacancy—Validity of.

The acts of a Committee appointed under the Religious Endowments Act when there is a vacancy are invalid. The Committee can act only when there is the full number.

P. R. Sundara Aiyar and *B. Sitarama Rao* for appellant.

J. L. Rosario and *K. P Madhava Rao* for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *February* 22.
S. A. 546 of 1908.

S. 147 (2) *&* (3) *of District Municipalities Act—Power of Municipality to substitute self-closing corks for water pipes in place of ordinary stop-corks to prevent wastage of water.*

Under S. 147 (2) and (3) of the District Municipalities Act, a Municipality is entitled to substitute self-closing corks for water-pipes in place of ordinary stop-corks, to prevent wastage of water.

G. S. Ramachandra Aiyar for appellant.

T. V. Seshagiri Aiyar for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *February* 22.
S. A. 461 of 1908.

Outstanding lease—No right to sue in ejectment even if lessee had not taken possession.

A suit in ejectment is not maintainable if there is an outstanding lease executed by the plaintiff, even though the lessee had not taken possession at the date of the suit.

P. Narayanamurti for appellant.

T. Ramachandra Row for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *February* 25. } S. A. 543 of 1909.

Ss. 295, 490, *C. P. C.—Attachment before judgment—Not an execution application for S.* 295—*Necessity for such application for S.* 295.

S. 295, C. P. C., requires an application for execution before one is entitled to rateable distribution. An 'attachment before judgment' does not dispense with the necessity for such an application. All that S. 490, C. P. C., lays down is that if there is such an application no subsequent attachment is necessary.

S. Srinivasa Aiyangar for appellant.

S. Padmanabha Aiyangar for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *February* 27. } S. A. 444 of 1908.

Limitation Act, S. 10—*Temple Trustees—Separate trustee for Kattalai—Payment by Government of a specific sum to the temple trustee for Kattalai—No limitation.*

S. 10 of the Limitation Act will apply to a case where certain trustees of a temple have been for a long time receiving annually from the Government and paying to the trustees of a Kattalai in the temple, moneys for the benefit of the Kattalai, the former being regarded as trustees for the sums so received.

The Advocate-General (*P. S. Sivaswami Aiyar*) for appellants.

K. Srinivasa Aiyangar and *S. Srinivasa Aiyar* for the respondent.

[FULL BENCH.]
Miller J.
Munro J.
Rahim J.
1910, *March* 3. } S. A. 121 1908.

Limitation Act, Arts. 123, 120, 144—*Suit by Muhamadan heir against a co-heir in possession.*

The article of limitation that is applicable to a suit for partition brought by a Muhammadan heir against another co-heir in possession is Art. 120 where the property is moveable, and Art. 144 where the property is immoveable, and not Art. 123.

J. L. Rosario for appellant.

B. Sitarama Rao for *P. R. Sundara Aiyar* for respondent.

Benson J.
Krishnaswami Aiyar J. } S. A. 1435 of 1907.
1910, *March* 3.

S. 540, *C.P.C.—Party aggrieved—Jenmi and Melkanomdar suing to redeem—Appeal by Jenmi alone—Maintainability of*

Suit by a Melkanomdar and the Jenmi to redeem the defendant an alleged Kanomdar. The Munsiff dismissed the suit on the ground that the defendant was not shown to be holding under a kanom from the 2nd plaintiff (alleged jenmi) and also that the 2nd plaintiff's title as janmi was not made out. 2nd plaintiff alone appealed to the District Court and his appeal was dismissed on the ground that the 2nd plaintiff had no right to recover possession as the property was admittedly outstanding under the Melkanom in favour of the 1st plaintiff. *Held*: the 2nd plaintiff was an aggrieved party within the meaning of S. 540, C.P.C., and was entitled to appeal.

C. Govindan Nair for *K. P. Govinda Menon* for appellant.

J. L. Rosario for respondent.

Benson J.
Krishnaswami Aiyar J. } S. A. 468 1908.
1910, *March* 4.

Right of action—Disturbanceo f enjoyment of water right not matured into easement.

A person disturbed in his enjoyment of water from a neighbouring land is entitled to maintain an action in respect of it when the party disturbing it is not the owner of the neighbouring land and is not otherwise acting with the authority of that person, though the right to take water may *not* have *matured into* an easement.

The Advocate General (*P. S. Sivaswami Aiyar*) for appellant.

P. Narayanamurthi for respondent.

NOTES OF RECENT CASES.

Benson J.
Krishnaswami Aiyar J.
1910, *March* 10.
S. A. 1413 of 1908.

Malabar Law — Kudimai Jenmom — Denial of title—Forfeiture by.

"Kudimai Jenmom" is no more than a perpetual lease, and the grantee forfeits his holding by denying the title of his grantor.

J. L. Rosario for appellants.

C. V. Ananthakrishna Aiyar for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *March* 11.
S. A. 1537 of 1908.

Anandravan of Tarwad entitled to Uralanship—Maintainability of suit for declaration, by.

An Anandravan of a Tarwad entitled to the Uralanship of a temple is entitled to maintain a suit for a declaration that a certain property is the jenmom of the Devaswom, especially when he is in the actual management of the Devaswom.

J. L. Rosario for appellant.

T. Richmond for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *March* 11.
S. A. 413 of 1908.

Transfer of Property Act—Lease—Whether must be executed by the landlord.

In this case *Krishnaswami Aiyar* J. dissents from the ruling in I. L. R. 30 M. 322.

T. Prakasan for appellant.

T. Natesa Aiyar for respondent.

Chief Justice.
Miller J.
1910, *March* 11.
C. M. A. 68 of 1909.

Ancient irrigation works—No duty of Government to repair either by common law or by contract—Whether zamindars liable.

Neither according to decisions nor according to the common law of the country till now known is the Government liable to repair ancient irrigation works. All the decisions, till now, making the Government liable were only cases of misfeasance and not nonfeasance.

No implied contract has, till now, been known to exist between the Government and its ryots imposing a liability on the Government to repair such works. The case of *Madras Railway Company* v. *Zamindar of Karvetnagaram*[1] deals only with the liability of a zemindar towards his tenants, and that too incidentally. A zemindar may be liable, to repair such works, to his tenant.

The Advocate-General (*P. S. Sivaswami Aiyar*) for appellant.
N. Rajagopalachari for respondent.

Benson J.
Krishnaswami Aiyar J. } S. A. 1081 of 1908.
1910, *March* 11.

Service tenure created after Regulation XXV of 1802—*Suit for resumption—Burden of proof on the defendant.*

In a suit for resumption by a zemindar against a person holding land on service tenure created after the Permanent Settlement, the burden of proving irresumability is on the defendant, and, as held in a series of cases in Madras, mere proof of long possession (40 years) even at a unifotm rate of Kattubadi is insufficient to shift the burden.

V. Ramesam for appellant-plaintiff.

P. Narayanamurthi for respondent-defendant.

Benson J.
Krishnaswami Aiyar J. } S. A. 1525 of 1908.
1910, *March* 11.

Pronote by two persons—Discharge by one—Endorsement in favor of stranger—Proof that endorsement is only a discharge—Maintainability of suit for contribution.

A pronote executed by the plaintiff and 1st defendant's father was discharged by plaintiff who on payment got it endorsed to a stranger benami for himself. The original

---

1.

amount of the pronote having been fully utilised by the 1st defendant's father alone, plaintiff brought this suit for recovery of the amount paid to discharge the debt. *Held* that there was nothing in law to prevent the plaintiff from proving that the endorsement was really a discharge and that on proof of discharge the plaintiff was entitled to succeed.

V. Ramesam for defendant-appellant.

P. Narayanamurti for respondent-plaintiff.

Chief Justice.
Abdur Rahim J. } A. S. 85 etc. of 1907.
1910, *March* 11.

Petition to declare a party as major—Order in the main case—No necessity to file similar petitions in the others.

A person who was a party in a series of connected cases attained majority. On a petition and affidavit filed in the main case he was declared a major. As regards the other cases their Lordships directed that a similar order declaring him major can be made even without any petition.

K. N. Aiya for petitioner.

Benson J.
Krishnaswami Aiyar J. } S. A. 615 of 1906.
1910, *March* 14.

Madras Act III of 1895, *S.* 3, *Cl.* (1) & (3)—*Suit for Karnam's office and emoluments in an Agraharam—Not cognisable.*

Clause 3 of S. 3 of Madras Act III of 1895 prohibits the maintainability of a suit for Karnam's office and its emoluments in an Agraharam village. The words 'other offices' in that clause do not mean offices other than those mentioned in Cl. (1) and (2) but offices in localities other than those mentioned in Cl. (1) & (2).

P. Nagabhushanam for plaintiff-appellant.

T. Prakasam for defendant-respondent.

Chief Justice.
Abdur Rahim J. } A. S. 60 of 1906.
1910, *March* 14.

Guardian and Ward—Suit for account—Onus—Acquiescence—Discharge even if no formal release.

In a suit by a ward on attaining majority against his guardian for accounting to him in respect of certain items of account the onus of proving the truth and binding nature of the transactions is on the guardian and the ward is entitled to an explanation from the guardian in respect of them. Though the protection which a ward enjoys at the hands of a guardian extends for some time even after majority, yet acquiescence by the ward after majority in a breach of trust will discharge the guardian even if there be no formal discharge.

K. Srinivasa Aiyangar for plaintiff-appellant.

The Advocate-General (*P. S. Sivaswami Aiyar*) and *P. Nagabhushanam* for respondent-defendant.

Benson J.
Krishnaswami Aiyar J.
1910, *March* 14. } S. A. 718 of 1908.

Subrogation — Vendee undertaking to pay two mortgages—Cannot plead 1st mortgage against the second mortgage.

It is not competent to a vendee who undertakes by his sale deed to discharge two mortgages on the land to plead as against the second mortgagee the first mortgage he has paid off.

G. S. Ramachandra Aiyar for appellant.

K. Srinivasa Aiyangar for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *March* 14. } S. A. 834 of 1908.

Partition between widows—No document necessary even if mutual reversionary rights released—Findings in order of remand binding on successor.

No document is necessary to effect an absolute partition between co-widows even if they release their mutual reversionary rights.

Findings given by a Judge on reversing a decree and remanding a case are binding on his successor.

G. S. Ramachandra Aiyar for plaintiff-appellant.

T. M. Krishnaswami Aiyar for defendant-respondent.

NOTES OF RECENT CASES.

Miller J.
Sankaran Nair J. } S. A. 1399 and 1400 of 1907.
1910, *January* 5.

Hiudu Law—Suit on pronote—Liability of reversioners.

In a suit upon a pro-note executed by a Hindu widow, *Held*: that the estate in the hands of the reversioners was liable if the debt was contracted by the widow in her representative capacity and not personally and for a purpose binding on the estate.

T. V. Seshagiri Aiyar for appellant.

P. Narayanamurthi for respondent.

Benson J.
Krishnaswami Aiyar J. } S. A. 891 of 1908.
1910, *March* 1.

A registered deed of gift is valid without delivery of possession.

C. V. Anantakrishna Aiyar for appellant.

K. Jagannatha Aiyar for respondent.

Benson J.
Krishnaswami Aiyar J. } S. A. 1404 of 1908.
1910, *March* 14.

Suits Valuation Act, S. 11—*Undervaluation affecting original and appellate forum—No prejudice—No right to interfere.*

The mere fact that a proper valuation of the suit would have changed the original and appellate forums is no ground for interference in second appeal if there is no prejudice to the party on the merits. [S. A. 848 of 1892 followed.]

K. Srinivasa Aiyangar and *S. Muthia Mudaliar* for appellant.

The Advocate-General (*P. S. Sivaswami Aiyar*) for respondent.

Chief Justice.
Abdur Rahim J. } O. S. A. 39 of 1908.
1910, *March* 16 & 17.

Vendor and Purchaser—Agent's authority—Extent of—Not entitled to receive purchase-money.

A general authority to a person to sell immoveable property does not include authority to receive the purchase money from the vendee on behalf of the principal. [*Mynn* v. *Joliffe*[1] and *Viney* v. *Chaplin* [2] followed.]

An agent to sell land has no implied power to receive the purchase-money.

If a person is authorised to settle the terms of an intended sale he has no power to conclude a contract of sale on behalf of his principal.

V. Masilamani Pillai for defendants-appellants.

A. Krishnaswami Aiyar for plaintiff-respondent.

Benson J.
Krishnaswami Aiyar J. } S. A. 899 of 1908.
1910, *March* 18.

Native Christians—Intestacy—Grant of Letters of Administration—Alienation before grant by the heir of his share—Validity of.

An executor derives his right to represent the estate of the testator by virtue of his appointment in the will and therefore represents the estate from the moment of the testator's death and even before the grant of the probate, but an administrator derives his right to represent the estate only from the grant of letters of administration by the Court, and before the grant of letters the heirs of the deceased have a right to deal with the estate and are not prohibited by any law from so dealing with it; so any alienation made of the share of an heir either privately or through Court before the grant of the letters is valid and binding on the administrator.

Joseph Satya Nadar for plaintiff-appellant.

G. Devasagayam for defendant-respondent.

Benson J.
Krishnaswami Aiyar J. } S. A. 1452 of 1908.
1910, *March* 18.

District Boards Act, Ss. 76, 148, 149—*Illegal levy of land cess by Collector—Handing it over to District Board—Tort—Liability of Collector—No liability of District Board.*

A Collector acting in excess of the authority conferred by S. 76 of the Local Boards Act and collecting land cess when not due is liable to be sued as a tort-feasor.

---

1. 2 R. R. 802. 2. L. J. Ch. 434.

The District Board for which he so purports to collect is not liable to the person from whom the collection is made even if the money collected is handed over to the District Board.

T. Subramania Aiyar for appellant.

The Government Pleader (*C. F. Napier*) for the Collector.

Benson J.
Krishnasawmi Aiyar J. } S. A. 1501 of 1908.
1910, *March* 18.

Perpetual service tenure in temple—Neglect of service—Emoluments—Resumption—Right to.

A person having a Kazhakkom Karaima service in a Devaswom (*i.e.*, a perpetual ministerial service) to which emoluments are attached is liable to have his services dispensed with, for neglect or refusal to do the work, by the Uralan (Trustee) and the emoluments may be resumed.

T. R. Ramachandra Aiyar for plaintiff-appellant.

P. R. Sundara Aiyar for defendant-respondent.

Wallis J.
Munro J. } S. A. 1712 of 1908.
1910, *March* 18.

Attachment before judgment—Ss. 483, 485, *C.P.C.—Transfer of suit from Court making conditional order of attachment—Power of the Court to which the suit is transferred.*

After an interim order for attachment before judgment, the suit was transferred to another Munsiff's Court. *Held*: though the Munsiff to whom the suit was transferred had no local jurisdiction in respect of the property attached, he had by implication of law authority to make the order absolute.

K. N. Aiyya for appellant.

G. S. Ramachandra Aiyar for respondent.

Benson. J.
Krishnasawmi Aiyar J. } S. A. No. 1961 of 1908.
1910, *March* 18.

'*Public road'—Meaning of—Madras Act V of* 1884, *S.* 49—*Vesting of public road.*

A public road, though not defined in Madras Act V of 1884, is one over which the public have a right of way. A mere right of passage over the road for cattle of the neighbouring owner

i.e., tenants of a zemindar, does not necessarily make it a public road. S. 49 of Act V of 1884 vests all public roads in the District Board.

V. Ramesam for plaintiff-appellant.

T. M. Krishnaswami Aiyar for defendant-respondent.

Benson J.
V. Krishnaswami Aiyar J. — S. A. 648 of 1908.
1910, *March* 21.

Guardian—No power to revive barred debts.

A guardian (mother) has no power to revive barred debts and the revival does not bind the minors.

V. Purushotham Aiyar for appellant.

R. Rangaswami Aiyangar for respondent.

Munro J.
Sankaran Nair J. — S. A. 1726 of 1908.
1910, *March* 23.

Water cess—Act VII of 1865*—No engagement—Liability to pay prima facie—Standing Orders of Board of Revenue on the subject—Only departmental rules.*

A person is liable to pay water cess under Madras Act VII of 1865, unless he shows an 'engagement' with the Government either express or implied to the contrary. The Standing Orders of the Board of Revenue on the subject of levying or remitting water cess have only the force of departmental orders and the acts of Revenue officials under those rules do not create any engagement.

The Government Pleader (*C. F. Napier*) for appellant-defendant.

T. Prakasam for plaintiff-respondent.

Munro J.
Sankaran Nair J. — S. A. No. 1820 of 1908.
1910, *March* 23.

Religious office—Release to next man entitled—Validity of.

A release in a partition deed of a religious office (*viz.*, a trusteeship of a private temple) vested in the senior member of a family in favour of the next senior is invalid in the absence of any rule of succession to the office binding upon the members, either existing before or made at the time of the partition.

P. C. Lobo for plaintiff-appellant.

C Madhavan Nair for defendant-respondent.

Chief Justice.
Sankaran Nair J.
1910, *March* 23.
O. S. A. 50 of 1907.

Hindu Law—Illegitimate son's share.

The share of an illegitimate son, when there is also a legitimate son, is half of what a legitimate son actually gets and not half of what he would get had he been a legitimate son.

T. Rangachariar and *K. Jagannada Aiyar* for appellant.

C. S. Venkatachariar and *C. S. Govindaraja Mudaliar* for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *April* 1.
S. A. 1861 of 1908.

Lease—Forfeiture by denial of title—Transfer of Property Act, S. 111—*Act antecedent to suit determining lease not necessary.*

In the case of leases before the Transfer of Property Act, it is not necessary that the landlord seeking to recover possession on the ground of a denial of title by the tenant should indicate his intention to determine the lease by an act antecedent to the institution of the suit.

B. Sitarama Rao for appellant.

K. Y. Adiga for respondent.

Chief Justice.
Abdur Rahim J.
1910, *April* 1.
A. S. 78 of 1906 & A. S. 180 of 1905.

Aliyasantana Law—Self-acquisition and joint family property.

Where the Ejaman of an Aliyasantana family has family funds and also his own funds at his disposal, though neither is by itself found sufficient to provide funds for the purchase, in the absence of any evidence to the contrary, the whole is to be presumed to be family property.

K. Narayana Row and *P. R. Sundara Aiyar* for appellant.

P. C. Lobo and *K. A. Madhava Rao* for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *April* 1.
S. A. 396 of 1908.

Hindu Law—Gift of land for a spiritual purpose—Validity of.

Gift by the daughter of a comparatively small portion of the land belonging to her deceased father on the occasion of the

Sraddha of the father at the Pushkaram is valid. Gifts for spiritual purposes by a limited owner though not strictly necessary, yet considered proper and reasonable by the community, are valid as against the reversioner provided they are for the spiritual welfare of the deceased ancestor.

Nagabhushanam for appellant.
Narayanamurthi for respondent.

Benson J.
Munro J.
1910, *April* 5. } S. A. 1680 of 1908.

Limitation Act, Art. 110—*Tenant holding over after termination of registered lease.*

When a registered lease is cancelled and the lessee holds on on the same terms, the rent is no longer payable under a contract in writing registered and the article of the Limitation Act that is applicable to such claim is Art. 110.

P. R. Sundara Aiyar, M. B. Doraisami Aiyangar and *S. Muthia Mudaliar* for appellant.

Swaminathan for *C. F. Napier* for the respondent.

Benson J.
Munro J.
1910, *April* 5. } S. A. 999 of 1906.

Mortgage by life-tenant—How far binding on remainderman when life-tenant not guardian.

A mortgage bond executed by the widow of the last male owner taking a life estate in the immoveable property of her husband under a will by the husband, both for herself and as guardian of the minor remainderman for payment of the debts of the deceased, his funeral expenses and for the expenses of marriage of the remainderman cannot bind the latter when the minor has another guardian, and the widow is neither the executor under the will nor a testamentary guardian.

A mere direction to spend Rs. 500 out of the estate for the funeral expenses of the testator does not make the legatee who is so directed, an executor by implication.

T. Rangachariar and *S. Muthia Mudaliar* for appellant.
P. R. Sundara Aiyar and *B. Sitarama Rao* for respondent.

Sankaran Nair J.
V. Krishnaswami Aiyar J.
1910, *April* 6.

S. A. 404 of 1908.

Owner of land liable to re-distribution—Tort in respect thereof—Non-joinder of others—Maintainability af suit.

The fact that the land held by the plaintiff in his own right as one of the co-sharers in a village is liable for redistribution at the time of next redistribution is no ground for holding that the plaintiff is not entitled to bring a suit in respect of a tort, without joining the other co-sharers.

V. Ramesam for appellant.

T. Rangachari for respondents.

Miller J.
Abdur Rahim J.
1910, *April* 6.

S. A. 2 of 1909.

Aliyasantana law—Mortgage for defence in criminal case—Upheld as binding, though not in connection with family property-

No hard and fast rule can be laid down as to how far expenses incurred in the defence of individual members of a Tarwad in criminal proceedings may validly be paid by hypothecating family property. A mortgage for payment of the expenses of the defence or the yejman and some members of the tarwad was upheld in this case as binding on the Tarwad.

B. Sitarama Rao for appellant.

K. Ramanatha Shenoi for respondent.

Sankaran Nair J.
Krishnaswami Aiyar J.
1910, *April* 7.

L. P. A. 152 of 1909.

Registration Act, S. 17—*Lease for* 3 *years for consolidated rent of Rs.* 56.

A lease for 3 years for a consolidated rent of Rs. 56 does not require registration under S. 17 of the Registration Act.

K. N. Aiya for appellant.

M. Narayanaswami Aiyar for respondents.

Miller J.
Munro J.
1910, *April* 7.

S. A. 1213 of 1908.

Revenue sale—Land other than land on which arrears are due—Sale free of incumbrances nevertheless.

When the defaulter's land is sold for arrears of land revenue, the sale passes title free of all incumbrances though the sale is in

respect of arrears due from some other land belonging to the defaulter.

The Government Pleader (*C. F. Napier*) for appellant.

V. Ramesam and *P. Narayanamurthi* for respondents.

Miller J. *Abdur Rahim* J. 1910, *April* 8.	S. A. 1796 of 1908.

Hindu Law—Suit by father—Whether res judicata against sons—No presumption of representative character.—S. 13, *C.P.C.* (*XIV of* 1882).

There is no presumption that a suit brought by a Hindu father is in the absence of anything to the contrary in the plaint etc. in his representative character so as to make a decree therein *res judicata* as against his sons.

Advocate-General (*P.S. Sivaswami Aiyar*) and *P. S. Subramania Aiyar* for appellants.

T. Narasimha Aiyangar and *T. N. Rajagopalachari* for respondents.

Miller J. *Abdur Rahim* J. 1910, *April* 8.	C. M. A. 200 of 1908.

S. 230, *C.P.C.* (*XIV of* 1882)—*Limitation Act*, *S.* 7.

More than 3 years after an application for execution was made by the decree holder and granted within the meaning of S. 230, C. P. C., and more than 12 years from the date for payment fixed in the decree a minor son of the decree-holder (who died soon after the first application) applied for execution.

Held that S. 230 was absolute and S. 7 of the Limitation Act did not save the bar.

T. Subramania Aiyar for appellant.

T. Rangachari and *N. Rajagopalachari* for respondents.

Benson J. *Munro* J. 1910, *April* 8.	L. P. A. 153 of 1909.

Promissory Note—Burden of proof—Alleged consideration found against—Burden on payee to prove other consideration.

Where the plaintiff, the payee of a promissory note, alleges a particular consideration which also appears on the face of the pro-note and it is found against, the burden is upon him to show any other consideration, and it is not open to him to rely

upon the general presumption as to consideration applicable to negotiable instruments.

Hon'ble T. Richmond for appellant.

M. Narayanaswami Aiyar for respondent.

Munro J.
Sankaran Nair J.
1910, *April* 12.

Cr. A. 42 of 1910.

Indian Penal Code, S. 471—*Using a genuine certified copy of a forged document.*

A person using a genuine certified copy of a forged document (here the Register in the Registration office) cannot be convicted of the offence of using as genuine a forged document.

Dr. Swaminathan and *B. Sitarama Rao* for appellant.

Public Prosecutor (*C.F. Napier*) for the Crown.

Benson J.
Rahim J.
1910, *April* 12.

S. A. 1041 of 1907.

C. P. C., S. 591—*Interlocutory order not appealable made sole ground of appeal—Maintainability of appeal.*

Where under S. 591, an order not appealable as such is made the sole ground of objection to a decree appealed against, and objection was taken that the appeal was not maintainable : *Held*, that the appeal was from a decree within the meaning of S. 591 which allows an appeal solely on the ground of impropriety of an interlocutory order. *Sher Singh* v. *Diwan Singh*[1] not followed.

L. A. Govindaraghava Iyer for appellant.

C. R. Thiruvenkatachariar for respondent.

Munro J.
Sankaran Nair J.
1910, *April* 15.

S. A. 1654 of 1908.

Hindu Law—Remarriage— Custom — Return of jewels—Reasonable.

Their Lordships accepted a custom which was held proved by the lower Courts, *viz.*, that on remarriage of a widow she is to recover the money paid by her to her deceased husband and the husband's relations to receive back the jewels given by him to her.

T. V. Muthukrishna Aiyar for defendant-appellant.

T. Prakasam for plaintiff-respondent.

---

1. (1900) 22 All. 366.

Chief Justice.
Abdur Rahim J.
1910, *April* 15.

A. S. 183 of 1905.

Limitation Act, S. 19—*Acknowledgment—Court of Wards—Collector—Power to acknowledge.*

It is competent to the Court of Wards as well as the Collector, where the Court of Wards has delegated the powers of management to the Collector, to acknowledge a debt due from the Estate.

C. F. Napier for appellant.

Hon'ble T. V. Sheshagiri Aiyar for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *April* 21.

S. A. 1903 of 1908.

Trusteeship—Board of Revenue and Taluk Board—Appointment of Trustee by Taluk Board, effect of.

The Taluk Board to whom the Board of Revenue has delegated the conduct of a charity cannot in its turn appoint a trustee so as to divest itself of all power of interference.

The Advocate General (*P. S. Sivaswami Aiyar*) and *T. Natesa Aiyar* for appellant.

Hon'ble T. V. Seshagiri Aiyar for respondent.

Benson J.
Krishnaswami Aiyar J.
1910, *April* 22.

S. A. 699 of 1908.

Judgment—Oral evidence dismissed summarily from consideration.

It is not open to a Judge to dismiss the oral evidence from consideration summarily without assigning any reasons except that it is oral. It is the duty of the Court to sift evidence though oral and come to a conclusion thereupon.

T. Natesa Aiyar for appellant.

Respondent *unrepresented.*

CASES REPORTED.

HIGH COURT—CIVIL.

	Page.
Abdulla v. Chekkooti	368
Abraham v. Lodge "Good Will"	383
Achutan Unni v. Vasunni	344
Annayyan v. Venkatachetti	355
Appa Mudaliar v. Rama Subbier	374
Asundi Basavon v. Govindappa	369
Gabriel v. Inas	377
Gongela Pichi Naidu v. Veeriah	362
Govindasami Tevan v. Doraiswami Pillai	381
Kali Amma v. Palappakkara Manakkal	347
Kandasami Asari v. Somaskanta Ela Nidhi	371
Kostha v. Savarimuthu	367
Minakshi Ammal v. Viswanada Aiyar	339
Minakshi Anni v. Appakutti	359
Ramasami v. Ramasami	386
Sammantha Gramany v. Devasikamani Gramany	364
Subramanya Mudali v. Velu	350
Veelammal v. Vavammal	349

INDEX OF CASES.

	Page.
Abatement—Co-Uralans—Abatement against one is abatement against all	347
Acquisition of right of pasturage—Extent of user	362
Alienation by Hindu manager—Assent and ratification by other co-parceners—Effect of ...	371
Appellate Court—Functions and powers of—Decree against one of two defendants—No appeal against the other ...	369
C.P.C., S. 99 (Act V of 1908)—Scope of—Non-joinder of parties—Practice ...	344
————Or. 1., r. 9. Or. 41 r 20 ...	364
Conditional release—Contract Act, S. 63 ...	383
Construction—Gift by Native Christians—Joint tenancy—T. P. Act, S. 45—Succession Act, S. 93, Ill. ...	377
Co-Uralans—Abatement against one is abatement against all	347
Contract Act, S. 63—Scope of conditional release—Validity of ...	383
Declaration—Suit for—Limitation ...	349
Deed—Gift by Native Christians—Construction—Joint tenancy—Succession Act, S. 90, Ill, and T P. Act S. 45—Applicability of ...	377
Estoppel—Mutual and joint wills—Revocability of—Advantage of tenant—Scope of principle ...	355
General Clauses Act, S. 6 ...	347
Hindu Law—Illegitimate sons—Maintenance—Adulterous offspring—Claim against deceased father's brothers ...	350

Hindu Law—Illegitimate sons—Right of inheritance—Illegal or forbidden intercourse 355
———Illegitimate sons—Right of inheritance—Widow—No exclusion by widow 359
——— Joint family—Manager—Alienation by—Assent and ratification by others 371
Indian Succession Act, S. 93, Ill.—Gift by Native Christians—Applicability 377
Joint Tenancy—Gift by Native Christians—Succession Act, S. 93, Ill. —T. P. Act, S. 45 377
Karnavan—Arrangements by—When successor can impeach 344
Limitation—Rule of procedure 347
Limitation Act, S. 30, Art. 177—Second appeal—Time to bring legal representatives 347
———Art. 127—'Exclusion'—Mere non-participation is not 364
———S. 10, Art. 12, 131—Suit for share of *tasdik* by Katlai trustee against temple trustee 374
———Suit for declaration—Specific Relief Act, S. 42 349
Maintenance—Hindu Law—Illegitimate sons—Adulterous offspring ... 350
Malabar Law—Karnavan—Arrangements by—When successor can impeach 344
———Co-Uralans—Suit against—Appeal abating against one abates against all 347
——— Tarwad—Gift to members—Right of management of gifted properties 368
Mortgage—Subrogation—Principles of—Covenant to discharge puisne incumbrance 380
Mutual and joint wills—Revocability of—Advantage—Estoppel ... 339
Native Christians—Gift by—Construction—Joint tenancy 377
Non-joinder of parties—C. P.C. (V of 1908) S. 99—Scope of—Practice 344
Oath—Vakil—Right of Vakil to terminate suit by oath of opponent—No, if not specially empowered 386
Parties—Non-joinder of—Partition suit—C.P.C., Or. 1. r. 9, Or. 41 r. 20.. 364
———Non-joinder of —C. P. C. (V of 1908) S. 99 —Scope of—Practice ... 347
———When abatement against one is such against all 347
Pasturage right—Nature of—Acquisition of right 362
Practice —Non-joinder of parties—C.P.C. (V of 1900) S. 99—Scope of ... 344
———Partition suit—C. P. C, Or. 1 r. 9 ; Or. 41 r. 20 364
Procedure— 364
Right of suit—Tort—No special damage—Obstruction of view to a curusady 367
Specific Relief Act—S. 42—Suit for declaration—Limitation ... 349
Subrogation—Mortgage—Discharge 380
Tarwad—Gift to members—Right of management of gifted properties 368
Tort—No special damage-Obstruction of view to a curusady-No right of suit. 367
Transfer of Property Act, S. 45—Gift by Native Christians—Applicability to 377
Trustee of Katlai—Trustee of temple—Relative positions of 374
Vakil—Right to terminate suit by oath of opponent—None if not empowered 386
Will—Mutual and joint wills—Revocability of—Estoppel 339
Words—'Advantage'—Meaning of, in a will—'Exclusion'—Meaning of... 339

NOTES OF RECENT CASES.

Benson J.
Krishnaswami Aiyar J. } S. A. 1554 of 1908.
1910, *March* 2.

Hindu Law—Gift by Manager—Minor brothers—Validity of.—

The Manager of a joint Hindu family cannot make a valid gift of property in favour of his sister when he has minor brothers. A gift invalid at its inception cannot be validated by the subsequent assent of the minor brothers on attaining majority.

P. S. Subramania Aiyar for appellant.

M. K. Narayanaswami Aiyar for respondent.

Miller J.
Munro J. } Crl. A. 843 of 1909.
1910, *April* 25.

Merchant Shipping Act V of 1883, *Ss.* 3 *&* 6—*Ship—Whether a boat is a ship.*

A vessel, *e.g.*, a boat which, though having mast and sails, has to be propelled by oars on some occasions, is not a ship within the meaning of Ss. 3 and 6 of the Merchant Shipping Act V of 1883.

Public Prosecutor (*C. F. Napier*) for the Crown-appellant.

C. E. Odgers and *H. C. King* for the accused.

Miller J.
Munro J. } Crl. A. 104 of 1910.
1910, *April* 26.

Cr. P. C., S. 235.—*Misjoinder of charges—I. P. C., Ss.* 193, 463 and 471.

Where an accused was charged in one trial of (1) forging or abetting the forgery of a pronote, (2) using it by assigning to another, and (3) giving false evidence in support of the assignee who sued on the note, their Lordships quashed the conviction and ordered a retrial, holding that there was a misjoinder of charges as the three offences charged could not necessarily form part of one and the same transaction [though the Sessions Court found that as a fact they so formed a part.]

Swaminadhan for the accused.

Public Prosecutor (*C. F. Napier*) for the Crown.

Benson J.
Krishnaswami Aiyar J. } S. A. 1085 of 1908.
1910, *April* 28.

Usufructuary mortgage—Payment by one not the rightful owner—Possession—Whether adverse.

A usufructuary mortgage redeemable in 1 year of several items was made in 1881. After the death of the owner leaving (1) a widowed daughter-in-law, (2) a grand-daughter by her, and (3) an adopted son the plaintiff, the first two sold their rights in item 1 to certain defendants in 1890 and those defendants in accordance with the covenants in their sale-deed paid Rs. 120 and redeemed item 1 in 1891. It was found that the possession of item 1 by them from 1891 was known to the plaintiffs who sued in 1906 to redeem the mortgage of 1881. *Held* that there could not be adverse possession in favour of the defendants as against the plaintiff as he had still time to redeem.

N. Rajagopalachari for appellant.

T. R. Venkatarama Sastri for respondent.

Benson. J.
Krishnaswami Aiyar J. } Ap. 177 of 1906.
1910, *April* 28.

Religious Endowments Act, Ss. 4 *and* 14—'*Public*' *temple —Jurisdiction to deal with.*

Even if the Government or its officials did not at any time before Act XX of 1863 appoint the trustee or manager of a temple, the Civil Court has jurisdiction to deal with the temple under S. 14 of the Act if in fact it is a public temple.

T. V. Narayanaiah for appellant.

N. Rajagopalachari for respondent.

Miller J.
Munro J. } Ap. 141 of 1905.
1910, *April* 28.

Madras Act I of 1876, *Ss.* 5 & 6—*Separate registry—Right to.*

Courts have a discretion to refuse separate registry at the instance of a grantor in case separate registry and the consequent separate assessment are likely to throw greater burden upon the grantee.

K. Srinivasa Aiyangar and *P. Narayanamurthy* for the appellant.

The Advocate-General (*P. S. Sivaswami Aiyar*) and *V. Ramesam* for respondents.

NOTES OF RECENT CASES.

Wallis J.
Krishnasamy Aiyar J.
1910, *July* 21.
} C. M. A. 53 of 1909.

Decree, form of,—Against Principal debtor and surety—Direction to proceed against principal debtor in the first instance—Sufficient compliance.

A decree against *A* and *B*. (the surety) with a direction that the plaintiff ought to proceed in the first instance against *A* is an unusual decree and when *bonafide* applications are made for arrest of the debtor as well as attachment of his moveables but neither proves successful, the mere fact that realisation is still possible from *A* is no ground to refuse execution against *B*; the decree is sufficiently complied with by the attempts made though unsuccessful.

N. Rajagopalachari for appellant.

T. R. Venkatrama Shastri for respondent.

Wallis J.
Krishnaswamy Aiyar J.
1910 *July* 22.
} C. M.A. 104 of 1909.

Estates Land Act, S. 3 (11) (*c*)—*Mokhasadar cultivating tenant—Whether payment to zamindar is rent—Revenue Courts—Jurisdiction.*

If a mokhasadar is actually using land under a zamindar for agriculture and pays him some poruppu or rent, it is rent or even after the amendment of S. 3 (11) (*c*) of Estates Land Act and Revenue Courts have jurisdiction to try a suit for recovery of the same.

Swaminadhan for appellant.

T. Prakasam for respondent.

Wallis J.
Krishnaswami Aiyer J.
1910, *July* 27.
} S. A. 1396 of 1970.

Evidence Act S. 35—*Report of Court of Wards as to a minor's age.*

A report of the Court of Wards as to the age of a minor is relevant evidence under S. 35 of the Evidence Act.

Advocate-General (P. S. Sivaswami Aiyar) for the appellant.

T. M. Krishnaswami Aiyar for respondent.

Munro J.
Rahim J.
1910, *July* 27.
} Crl. R. C. 296 of 1910.

Cr. P. C., S. 144—*No emergency—No right to pass order ex-parte.*

If there is no emergency or want of time to serve notice no order *ex-parte* under S. 144 can be passed.

T. Rangachariar for petitioner.

Public Prosecutor (C. F. Napier) and *T. Richmond* contra.

Wallis J.
Krishnasamy Aiyar J.
1910, *July* 29.
} S. A. 1943 of 1908.

Apparent enjoyment of incorporeal right—Burden of proof.

Where it is found that a person is in apparent enjoyment of an incorporeal right such as an easement, the burden is upon the party disturbing it to show that the right had not been enjoyed for the requisite prescriptive period.

P. S. Sivaswami Aiyar The Advocate General for appellant.

K. Narayanaswmi Aiyar for the respondent.

Wallis J.
Krishnaswamy Aiyar J.
1910 *August* 2.
} S. A. 261 0 of 1909.

Drain—Continuous easement—Non uses for 20 *years.*

Right to a drain is a continuous easement and mere non-uses for a period of twenty years does not extinguish the right.

P. Narayanamurthi for appellant.

V. Ramesam for respondent.

CASES REPORTED.

HIGH COURT—CIVIL.

	Page.
Chengiah *v.* Kalahasti Zemindar	55
Naganatha Aiyar *v.* Krishnamurthi Aiyar	535
Srinivasa Aiyangar *v.* Srinivasa Aiyangar	54
Veerappa Naick *v.* Muthusami Naick	56

HIGH COURT—CRIMINAL.

Rangasawmi Naidu, *In re*	56

INDEX.

C. P. C. (Act XIV of 1882), S. 13 Cl. (5), S. 30—Parties—Right in common—Decree, how far binding—*Res judicata* in execution of decree for injunction 55

———**Ss. 42, 43, 103, 157**—Cause of action, meaning of—First suit dismissed for default—Maintainability of second suit on an alternative claim 53

Landlord and tenant—Partnership in lease-hold interest—Forfeiture—Tenant's acquiescence—Limitation Act, Art. 110, 112, 115—Liability of assignee for rent 55

Minor—Mortgage by guardian—Onus—Reviving barred debts 56

Penal Code, S. 166—Representing notice to be warrant 56

UNIVERSITY
LIBRARY.
LAW COLLEGE.

UNIVERSITY LAW COLLEGE LIBRARY.

NOTES OF RECENT CASES.

Wallis J.
Krishnaswami Aiyar J. } C. M. A. 219 of 1909.
1910, *August* 4.

Probate—Decree—Appeal—Ad valorem Court-fees.

An order of a Probate Court refusing to revoke probate has the force of a *decree* and *ad valorem* Court fee has to be paid on an appeal from the order.

P. Narayanamurthi for appellant.

V. Ramesam for respondent.

Wallis J.
Krishnaswami Aiyar J. } C. M. S. A. 75 of 1909.
1910, *August* 5.

Decree awarding mesne profits—Interest allowable in execution.

If the decree awards an ascertained amount as mesne profits, no interest on the mesne profits can be allowed in execution [*Harmanage Narain Singh* v. *Ramprasad Singh*[1] followed.]

T. M. Krishnaswami Aiyar for appellant.

Respondent *not represented.*

Wallis J.
Krishnaswami Aiyar J. } C. M. S. A. 17 of 1909.
1910, *August* 5.

Obstruction—Execution—Just cause—S. 334, C. P. C.

A re-sale by the decree-holder-purchaser to the judgment-debtor is just cause for obstruction under S. 334, C. P. C., by the judgment-debtor to the execution of the decree.

K. Narayana Rau for appellant.

K. Ramanatha Shenai for respondent.

Wallis J.
Krishnaswami Aiyar J. } C. M. S. A. 58 of 1909.
1910, *August* 5.

Execution—Prior application for attachment and sale—Stopping of sale owing to claim petition—Subsequent application for sale only within 3 years of stopping the sale—S. 330, C.P.C.—No bar.

1. (1907) 6 C.L.J. 463.

If the original application for execution be for attachment and sale but the sale is stopped owing to certain claim petitions, S. 230, C. P. C., is no bar if the subsequent application be for sale alone and be within 3 years from the date on which the right to apply accrued.

B. Narasimha Row for appellant.

T. Prakasam for respondent.

Wallis J.
Krishnaswami Aiyar J. } C. M. A. 102 of 1909.
1910, *August* 5.

Impartible Zamindari—Money decree—Liability of Zamindari after Zamindar's death—S. 41, Madras Court of Wards Act (1902).

A money decree against the holder of an impartible estate can be executed against the Zamindari in the son's hands as assets of his father.

[*Raja of Kalahasti* v. *Achigadu*[1] and *Karvetnagar case*[2] followed].

Section 41 of the Madras Court of Wards Act is an absolute bar for the recovery of interest even after the discharge of the estate in cases not exempted by the section.

T. R. Ramachandra Aiyar and *V. Krishnaswami Aiyangar* for the appellant.

A. Ramachandra Aiyar for the respondent.

Wallis J.
Krishnaswami Aiyar J. } C. M. S. A. 61 of 1909.
1910, *August* 5.

Limitation Act, Art. 179—Decree directing possession on payment for improvements.

A decree directing the defendant to deliver possession to the plaintiff on payment of Rs. 700 for improvements is a decree capable of execution at the date of the decree and as such Art. 179 is the Article that is applicable to such a case.

[*Chhedi* v. *Lalu*[3] dissented from].

B. Sitarama Row for appellant.

K. P. Lakshmana Row for respondent.

---

1. (1907) I. L. R. 30. M. 454. 2. (1909) I. L. R. 32 M. 429.
3. (19[illegible]) I. L. R. [illegible]

Wallis J.
Krishnaswami Aiyar J. } S. A. 50 of 1909.
1910, *August* 10.

Agreement not to partition—Muhammadan minor—Agreement bad as regards some, bad as regards all.

The better opinion is that an agreement not to partition for a limited perod, if for good consideration, is binding as between the parties to the contract. Such an agreement entered into by a guardian on behalf of a Muhammadan ward can only under exceptional circumstances be held to be justifiable.

Such an agreement, if bad as regards some, cannot in the nature of things be upheld against the others.

J. L. Rosario for appellant.

T. R. Ramachandra Aiyar for respondent.

Krishnaswami Aiyar J. } Crl. R. C. 164 of 1910.
1910, *August* 11.

Cr. P. C., Ss. 488, 489—*Subsequent order of Civil Court for restitution of conjugal right or for maintenance—Effect of.*

An order of a Civil Court directing restitution of conjugal rights or maintenance is a change in the circumstances of the husband within the meaning of S. 489, Cr.P.C., so as to be pleaded in defence of an application to execute a previous order of the Magistrate for maintenance. The husband is entitled to an order from the Magistrate for a cancellation of his order.

K. S. Krishnaswami Aiyangar for petitioner.

Mahomed Ibrahim Sahib for respondent.

Wallis J.
Krishnaswami Aiyar J. } S. A. 390 of 1909.
1910, *August* 12.

C. P. C., S. 244—*Religious office, sale of—Not objected to in execution—Suit against an auction-purchaser—Decree-holder not party—Conversion into execution application inadmissible.*

Two kinds of cases come within S. 244; *viz.*, (1) questions arising between decree-holder and judgment-debtor in which third parties like the auction-purchaser are interested, and (2) questions between parties or their representatives.

A suit to recover possession of a hereditary office sold in execution of a decree against the father through whom the son

claims (the son being also a party to the execution as legal representative) is incompetent, as it would affect the decree-holder in a matter relating to execution and as such comes within S. 244.

When the decree-holder is not a party to the suit, the plaint cannot be converted into an execution-petition and dealt with on that footing.

[*Manickka* v. *Rajagopala* [1] dissented from. *Krishna Satapasti* v. *Sarasvatula Sambasiva Raw* [2] followed.]

T. Narasimha Aiyangar for appellant.

T. Rangachariar for respondent.

Miller J.
Krishnaswami Aiyar J.
1910, *August* 17.
S. A. 819 of 1908.

T. P. Act, S. 55 (6) (*b*)—*Vendee's lien not possessory—No lien after delivery.*

A vendee of immovable property under an oral sale, invalid for want of a registered instrument. Cannot claim the benefit of S. 55, Cl. (6) of the Transfer of Property Act. Even if he can, the lien conferred by that section not being a possessory lien, is no defence to a suit for possession.

C. S. Venkatachari for appellant.

T. M. Krishnaswami Aiyar for respondent.

Miller J.
Krishnaswami Aiyar J.
1910, *August* 18.
S. A. 1507 of 1909.

Registration Act, Ss. 17, 49—*Patta for over Rs.* 50 *refused—Whether a lease.*

A patta for over Rs. 50 tendered but refused by the tenant is not a lease, and therefore does not require registration, a lease being a bilateral transaction. [*Venkatachalam Chetty* v. *Audian* [3] considered.]

T. M. Krishnaswami Aiyar for appellant.

R. Kuppuswami Aiyar for respondent.

---

1. (1907) I.L.R. 30 M. 507. 2. (1908) I.L.R. 31 M. 177.
3. (1881) I.L.R. 3 M. 358.

NOTES OF RECENT CASES.

Wallis J.
Krishnaswami Aiyar J. } A. S. 81 of 1906.
1910, *August* 5.

Right of way—Dedication—Burden of proof—Dedication by trustees—Inconsistent with purposes of trust—Qualified dedication—Procession with music.

Procession with music by Mahomedans along side of a temple is not inconsistent with the due performance of the services in the temple; as such it is not *ultra vires* of the trustees to dedicate a way to the public with rights of procession with music. Public right of way includes right of procession with music. Dedication is presumed to be complete, and it is for the party who sets up a qualified dedication to make out the qualification. *Quaere*—Whether there can be a qualified dedication as to the manner of exercise of the right.

P. R. Sundara Aiyar, *K. N. Aiya*, and *B. Sitarama Rao* for appellant.

K. Narayana Rao and *K. P. Madhava Rao* for respondent.

Miller J.
Krishnaswami Aiyar J. } S. A. 1508 of 1909.
1910, *August* 18.

Agreement to dispense with patta and muchilika with three joint landlords—Subsequent partition—Whether agreement enforceable after partition.

An agreement to dispense with the exchange of *patta* and *muchilika*, entered into with three joint landlords is enforceable after partition by any one of them to whose share the lands may fall on partition.

T. M. Krishnaswami Aiyar for appellant.

R. Kuppuswami Aiyar for respondent.

Abdur Rahim J.
Krishnaswami Aiyar J. } C. R. P. 809 of 1909.
1910, *August* 19.

C. P. C. (Act XIV of 1882) *S.* 257 *A.—Prohibition in, applicable only between parties.*

The prohibition contained in S. 257 A., C. P. C., applies only between parties to the suit.

A. Krishnaswami Aiyar for petitioner.

Respondent *not represented.*

Miller J.
Krishnaswami Aiyar J. } S. A. 359 of 1906.
1910, *August* 19.

Specific Relief Act S. 42—Plaintiff found to be in possession of part—Declaration in respect of such part.

Where a suit is brought for a declaration that a mortgage effected by the managers of the plaintiff's family(defendants 1 to 9) of certain items of the family property are not binding against the family, the fact that the plaintiffs are found to be in possession of only part of the family property is no ground for refusing a declaration that it is not so binding in respect of the portions that they are so found to be in possession, though in respect of the other property such a declaration cannot be made.

B. Sitarama Rao for appellant.

J. L. Rosario for respondent.

Miller J.
Krishnaswami Aiyar J. } Cr. M. P. 258 of 1910.
1910, *August* 25.

Cr. P. C., Ss. 195, 526—Transfer of sanction application.

A sanction application pending before a Court cannot be transferred to any Court which is not a Court in which or in connection with the proceedings of which the offence was committed or some other Court to which such Court is subordinate. Their Lordships accordingly dismissed the application for transfer from the Sessions Judge before whom the application was pending to any other Court as the sanction of any other Sessions Court would be useless.

M. K. Narayanasami for petitioner.

S. Swaminadhan for respondent.

Miller J.
Krishnaswami Aiyar J. } S. A. 75 of 1909.
1910, *August* 25.

Mortgage—Puisne mortgagee suing for sale—Prior mortgagee's rights not expressly protected by the decree.

A puisne mortgagee suing to sell the property mortgaged recited the previous mortgage in the plaint without impeaching it and also made the mortgagee party. An issue was raised in the Court of first instance, as to the amount due and

found upon, but the suit was dismissed on the ground that the plaintiff's mortgage was bad. On appeal the plaintiff's suit was decreed. Neither in the grounds of appeal nor in the judgment was any question raised as to the validity of, or the amount due on the 1st mortgage. *Held*: the prior mortgagee could sue for sale on his mortgage though he had not got his rights expressly protected by the decree or admitted by the puisne mortgagee in the prior litigation.

S. Krishnamurthi for appellant.

T. Natesa Aiyar for respondent.

Wallis J.
Krishnaswami Aiyar J. } Cr. R. C. 175 of 1910.
1901, *August* 26.

City Municipal Act—Prosecution for non-payment of profession tax—Defence of non-residence not open.

It is not open to a person who is prosecuted for non-payment of profession tax under the City Municipal Act to contend that he was not exercising the profession within the city limits during the relevant time. His only remedy is to appeal against the imposition of the assessment in the manner provided by the Act, and in the absence of such appeal or revision the assessment is final and cannot be questioned in any proceedings instituted on account of such non-payment, whether it be distraint, suit or prosecution.

T. S. Rajagopala Aiyar for petitioner.

The Crown Prosecutor for the Crown.

P. Doraiswami Aiyangar Contra.

Miller J.
Krishnaswamy Aiyar J. } S. A. 13 and 14 of 1909.
1910 *August* 26.

Landlord and tenant—Adjudication that a person is tenant, in Revenue Court—Conclusive as to the rent of that fasli.

An adjudication in a Revenue Court that a person is a tenant in a summary suit brought against him to enforce acceptance of pattah which is decreed is conclusive against such person in any subsequent suit brought in the Civil Court for rent for that fasli.

S. Rajagopala Aiyangar for appellant.

A. Ramachandra Aiyar for respondent.

Chief Justice
Ayling J.
1910, *August* 31. } A. S. 109 of 1906.

Tank in a village—Trees on the bund—Repair by one villager of tank and enjoyment of fruits—Whether that villager is a trustee.

The mere fact that the plaintiff was executing repairs to, and enjoying the fruits of trees on the bank of an urani (tank) for a long number of years does not vest in him the trusteeship of the urani on behalf of the villagers so as to entitle him to bring a suit as trustee, his acts being referrable to his position as one of the villagers.

[*Sivaraman Chetty* v. *Muthaya Chetti*[1] referred to.]

K. Srinivasa Aiyangar and *A. Krishnaswami Aiyar* for appellant.

T. Rangachari for respondent.

Miller J.
Munro J.
1910, *September* 6. } Cr. R. C. 220 of 1910.

Ss. 36, 37, 190, *3rd & 4th Schedules of Cr. P.C.*

A notification of the Government of India declared that a particular European British subject who was created a Justice of the Peace shall "have in proceedings against European British subjects * * * all the powers conferred by the Criminal Procedure Code of 1898 on Magistrates of 1st class who are Justices of the Peace and European British subjects."

Held that the Criminal Procedure Code draws a distinction between the ordinary powers of various classes of magistrates as such and powers conferrable on them by Local Governments or District Magistrates; that the word 'conferred' in the notification does not mean 'conferrable' and that therefore the Justice of the Peace cannot take cognizance of an offence under S. 190, Criminal Procedure Code, unless such power was actually conferred on him.

B. W. S. Lawrance and *C. S. Govindaraja Mudaliar* for petitioner.

Advocate-General (*P. S. Sivaswami Aiyar*) for the Crown.

---

1. (1882) I. L. R. 12 M. 44 (P. C.)

Abdur Rahim J.
Krishnaswami Aiyar J. } S. A. 49 of 1909.
1910, *September* 8.

Civil Procedure Code, S. 283—*Order dismissing claim—Judgment-debtor ex parte—Can't avail himself of.*

An order on a claim petition to which the judgment-debtor is a party cannot be availed of by him when he did not appear and oppose the claimant.

T. V. Seshagiri Aiyar for appellant.

P. Narayanamurthi for respondent.

Abdur Rahim J.
Krishnaswami Aiyar J. } C. M. A. 190 & 191 of 1909.
1910, *September* 9.

Limitation Act, Art. 39, 109, 120—*Suit for mesne profits—Nature of suit—Appeal—Maintainability of.*

A suit for mesne profits is in the nature of a suit for damages for trespass. It is not cognisable by a Court of small causes and therefore an appeal lies (under Act V of 1908) against an order of remand made by an appellate Court. Such a suit falls under Art. 39 of the Limitation Act when it does not fall under Art. 109.

T. Rangachari for appellant.

S. Swaminadhan for respondent.

Abdur Rahim J.
Krishnaswami Aiyar J. } S. A. 563 of 1909.
1909, *September* 9.

Judgment against father regarding immovable property—sons not parties, whether bound—Question of fact in each case, whether father was sued as representing family.

It is a question of fact in each case to be determined from the facts and circumstances of the case whether a father was sued in his representative capacity so that the sons can be held to the bound by the judgment therein.

P. Narayanamurthi for appellant.

P. Nagabhushanam for respondent.

Abdur Rahim J.
Ayling J.
1909, *September* 12.
S. A. 1195 of 1908.

Rent Recovery Act, S. 11—*Rates of rent—Improvements by tenants at their expense—Enhancement of rent—Implied contract —Unenforceable.*

A contract to pay the landlord higher rates for improvements effected at tenants' expense is illegal and unenforceable as there is no consideration for the same moving from the landlord.

V. V. Srinivasa Aiyangar and *P. R. Srinivasa Aiyangar* for the appellant.

The Advocate General (*P.S. Sivaswami Aiyar*) for respondent.

Munro J.
Krishnaswami Aiyar J.
1910, *September* 13.
S. A. 1007 of 1909.

Transfer of Property Act, Ss. 130, 137—*Negotiable promissory notes assignable orally.*

A promissory note payable on demand can be assigned orally without an instrument in writing. S. 130 of the Transfer of Property Act has no application to instruments which are negotiable.

Rajagopala Aiyangar for *K. Srinivasa Ayangar* for appellant.

T. Ramachandra Rao for respondent.

Munro J.
Krishnaswami Aiyar J.
1909, *September* 13.
Cr. R. C. 202 of 1910.

Criminal Procedure Code, S. 423—*Powers of the Appellate Court—Charges under Ss.* 148 & 325—"*Alter finding.*"

Where a person is charged with the commission of offences under Ss. 148 and 325, I. P. C., and the first Court acquits him of the offence under S. 148 but convicts him for the latter offence, on an appeal from the conviction it is competent to the appellate Court to alter the conviction into one under S. 148 provided that the sentence is maintained.

Joseph Satya Nadar for petitioner.

S. Swaminadhan for counter-petitioner.

The Public Prosecutor (*C. F. Napier*) for the Crown.

Abdur Rahim J.
Ayling J.
1910, *September* 13.

S. A. 1528 of 1908.

Rent Recovery Act, S. 11—*Water cess—Payment of, by landlord—Right to recover from tenant not barred by S.* 11 *of Act VIII of* 1865.

Where the Government levies water-cess from the landlord for water taken by the tenant, S. 11 of the Rent Recovery Act is no bar for the landlord recovering it from the tenant.

T. R. Venkatarama Sastri for appellant.

P. Narayanamurthi for respondent.

Abdur Rahim J.
Ayling J.
1910, *September* 14.

S. A. 222 of 1909.

Order XLI, Rule, 22 *Cl.* (1), *C. P. C.—Appeal barred by limitation—Memo of objections not maintainble.*

Order 41, Rule 22, Cl. (1), C. P. C., does not lay down any new rule different from that laid down by Act XIV of 1882. If an appeal is dismissed as having been filed out of time a memorandum of objections therein cannot be heard.

T. Richmond for appellant.

C. V. Anantakrishna Aiyar for respondent.

Abdur Rahim J.
Krishnaswami Aiyar J.
1910, *September* 9.

S. A. 844 of 1909

Abatement—Death of one of the defendants—Suit in ejectment.

On the death of one of the defendants in a suit in ejectment against several trespassers, the suit will abate only so far as the party dying is concerned and not against the others

S. Krishnamachari for appellant.

T. Natesa Aiyar for respondent.

Munro J.
Krishnaswami Aiyar J.
1910, *September* 20.

C. M. P. 1585 of 1910.
C. R. P. 436 of 1910.

C. P. C., S. 24—*Order* 39, *R.* 22, *Cl.* (2)—*Power of the Court to which a suit is transferred to.*

The Court to which a suit is transferred cannot punish a party for disobedience of an injunction granted by the Court from which the case is transferred. The only Court which can under Order 39, Rule 2, (Cl) (2), punish a party for disobedience is the Court which granted the injunction. Transfer of a suit on the application of a party without notice is not *ultra vires* but only an irregularity, and their Lordships declined to set aside the order when the Court was cognizant of that fact, and was also reminded of the power of transfer *suo motu* possessed by the Court, though it did not purport to act on such power.

T. Richmond for petitioner.

S. Swaminathan for respondents.

Abdur Rahim J.
Krishnasawmi Aiyar J.
1910, *eptember* 21.
} S. A. 1306 of 1907.

Hindu Law—Marriage—Obligatory ceremony—Family property may be alienable for the expenses of.

It is comptent for the managing member of a Hindu family, to mortgage a portion the family property for the reasonable expenses of the marriage of a junior member. Marriage is, under the Hindu Law, an obligatory ceremony for which, under Chapter I Sec. 1, Pl. 28, 29 of the *Mitakshara*, the manager of the family can conclude a mortgage. [This was the case of Sudras.]

T. Prakasam for appellant.

P Narayanamurthi for respondent.

Abdur Rahim J.
Krishnaswami Aiyar J.
1910, *September* 21.
} S. A. 1489 of 1909.

Transfer of Property Act, S. 55, *Cl.* 6 (*b*)—*A completed sale a condition precedent.*

The charge contemplated by S. 55, Cl. 6 (*b*), of the Transfer of Property Act is in favour of a person who has a complete sale in his favour, which falls off owing to some reason and is not conferred on a person in whose favour there is only a valid contract to sell.

T. R. Ramachandra Aiyar for appellant.

J. L. Rosario for respondent.

NOTES OF RECENT CASES.

Krishnaswami Aiyar J.
1910, *October* 6. } S. A. 955 of 1910.

Evidence Act, S. 32, *Cl.* (3)—*Description of land by boundaries by third parties—No legal evidence.*

A description of land in suit, as being bounded by certain boundaries, in a document between third parties, is no legal evidence under S. 32, Cl.(3), Evidence Act, for the question as to the extent of the land in suit. [*Ningama* v. *Bharmappa*[1] considered.]

B. Narasimha Rao for appellant.

Abdur Rahim J.
Krishnaswami Aiyar J. } S. A. 165 of 1907.
1910, *October* 10.

Hindu Law—Re-marriage of widow—Effect on alienation.

An alienation by a Hindu widow, not being for a binding purpose, cannot operate beyond her widowhood, *i.e.*, as soon as she re-marries, the interest taken by the alienee comes to an end.

M. B. Dorasami Aiyangar for appellant.

T. R. Ramachandra Aiyar for respondent.

Chief Justice
Abdur Rahim J. } A. S. 107 of 1904.
1910, *October* 11. } A. S. 108 of 1904.

Personal decree against widow—Execution sale—Effect of.

In the case of sales in execution of decrees against widows in respect of debts properly incurred for the benefit of the estate though not specifically charged on the estate, it is, as in the analogous case of decrees against the father, a question of construction in each case, as to what was really intended to be sold. If on a fair consideration of the decree, execution proceedings, the sale certificate and proclamation, and the conduct of the parties, it appears that what was intended to pass was the entire estate and not merely the particular estate of the widow, the entire estate will pass.

S. Srinivasa Aiyangar for appellant.

The Advocate-General (*P. S. Sivaswami Aiyar*), *V. C. Seshachariar* and *T. R. Venkatrama Sastri* for respondent.

---

1. (1897) I. L. R. 23 B. 63.

Abdur Rahim J.
Ayling J.
1910, *October* 11.
S. A. 807 of 1909.

Contract Act, S. 74, *Exception—" Gives any bond"—Meaning of.*

Though there may be no order of the Government operating on a member of the public to enter into any contract of the nature contemplated by the Exception to S. 74 of the Contract Act, yet if there is an order of the Government empowering the President of the District Board to enter into certain contracts for public purposes, any person who chooses to enter into such a contract with the President of the District Board and gives a bond for the performance of the same, *gives* such bond under the order of the Government within the meaning of the Exception.

T. R. Venkatrama Sastri for appellant.

N. Rajagopalachariar for respondent.

Abdur Rahim J.
Krishnaswami Aiyar J.
1910, *October* 13.
C. M. A. 183 of 1909.

Limitation Act (1908), *Art.* 164—*Decrees passed before the Act came into force—Applications after.*

Article 164 of the Limitation Act, 1908, governs petitions to set aside *ex parte* decrees presented after the passing of the new Act though the decrees might have been passed while the old Limitation Act was in force.

Joseph Satya Nadar for appellant.

C. V. Anantakrishna Aiyar for respondent.

Abdur Rahim J.
1910, *October* 14.
C. R. P. 831 of 1909.

Promissory Note—No intention to create one is necessary if document is a note.

If a document is a promissory note it is not necessary, in addition to this, that there must have been an intention to create by the document a promissory note.

T. R. Venkatrama Sastri for petitioner.

N. Rajagopalachari for respondent.

Munro J.
Sankaran Nair J.
1910, *October* 18.
} C. M. A. 76 of 1909.

Execution-purchaser—Representative of decree-holder—Ex parte decree set aside—C. P. C., S. 583—*Order under, for restitution against stranger purchaser—Appeal from order—Maintainability—Bona-fides of purchaser.*

A purchaser in a Court sale is a representative of the decree-holder and an order under S. 583 for restitution against a stranger-purchaser is appealable. Their Lordships called for a finding whether the stranger-purchaser who bought under an *ex parte* decree in the case was a *bona fide* purchaser.

T. V. Seshagiri Aiyar and *M. K. Ramasami Aiyar* for appellant.

T. S. Rajagopala Aiyar for respondent.

Abdur Rahim J.
1910 *October* 26.
} Crl. R. C. 314 of 1910.

Mischief as to water-course—Local inspection and experiment by trying Magistrate—Result of such inspection and experiment used in judgment—Illegality—Quashing.

Where a Magistrate, after the close of the case in which the accused was tried for mischief by obstructing a water-course irrigating complainant's lands, himself went with an overseer, inspected and experimented at the place, examined the overseer as a Court witness and embodied his views of inspection and experiment in the judgment, which views were also relied upon by the appellate Court in support of the conviction: *Held* that the conviction was illegal and must be set aside.

T. Rangachari and *M. K.Narayanasami Aiyar* for petitioner.

The Public Prosecutor (*C. F. Napier*) for the Crown.

Abdur Rahim J.
Krishnaswami Aiyar J.
1910, *October* 26.
} A. S. 150 of 07.

Impartible Zamindari—Debts incurred by a member of the family in whom the Zamindari vested pending adoption—If and when binding on the adopted son.

Debts incurred by a member of a family in whom an impartible Zamindari had vested pending an adoption by the widow of the last incumbent are binding on the adopted son when the debt was incurred for a purpose binding on the estate, though not actually charged on the estate.

P. R. Sundara Aiyar for appellant.

The Advocate-General (*P. S. Sivaswami Aiyar*) for respondent.

Munro J.
Sankaran Nair J.
1910, *October* 26.
} C. R. P. 807 of 1909.

Jurisdiction—Redemption suits—Court fees value and value for jurisdictional purposes same.

In redemption suits, the valuation for purposes of jurisdiction and Court fees is the same.

K. Narayana Rao and *C. V. Ananthakrishna Aiyar* for appellant.

K. R. Subramania Sastri for respondent.

[Full Bench.]
Wallis J.
Krishnaswami Aiyar J.
Ayling J.
1910, *November* 1.
} *In the matter of* a Vakil.

Vakil—Unprofessional conduct—Charge of Judge to Assessors—Vakil presenting a petition after charge and before delivery of judgment, charging Judge with prejudging the case and having already written the judgment—Professional misconduct—Reprimand.

Filing a petition after the charge to the assessors and before delivery of judgment, charging the Judge with having prejudged the case, having summed up the case for conviction and having previously written a judgment in the case, constitutes, on the part of the Vakil presenting it, professional misconduct.

The Advocate-General (*P. S. Sivasawmi Aiyar*) for the Court.

L. A. Govindaraghava Aiyar for the Vakil.

[FULL BENCH.]

Chief Justice
Krishnaswami Aiyar J.
Ayling J.
1910, *November*,

Referred Case No. 3 of 1910.

Divorce—Decree Nisi by District Court—Appeal in the High Court—Withdrawal—Jurisdiction of High Court to allow withdrawal.

The High Court has jurisdiction to allow the plaintiff to withdraw his petition for divorce in the appellate Court after there has been *decree nisi* for divorce in the District Court and when the matter is before it for the purpose of making the decree absolute.

C. Kunhiraman for appellant.

P. Kundu Panikar and *G. Joseph* for respondent.

Munro J.
Sankaran Nair J.
1910, *November* 2.

Crl. R. C 213 of 1910.

Cr. P. C., S. 144—*Order ex parte—Subsequent interlocutory order modifying in effect the previous order—Both orders subsisting—Validity of later order.*

After making an *ex parte* order under S. 144, Cr. P. C., the passing of an *interlocutory* order pending the making of a final order and modifying in effect but not in terms the previous order is illegal as it could not be an order under Sub-section (4), S. 144, Cr. P. C. Neither could the later order be considered as one passed under clause (1) as two orders under sub-section (1) cannot subsist at the same time.

E. R. Osborne and *M. K. Naraynaswami Aiyar* for petitioners.

The Public Prosecutor (*C. F. Napier*) contra.

[FULL BENCH.]

Chief Justice
Krishnaswami Aiyar J.
Ayling J.
1910, *November* 3.

S. A. 7 of 1908.

Registration Act, S. 17—*Unregistered agreement to lease—Inadmissible in evidence.*

An agreement to lease immoveable property which is not registered cannot be admitted in evidence even in a suit for specific performance of the agreement.

C. S. Venkatachari for appellant.

S. Srinivasa Aiyangar for respondent.

[FULL BENCH.]

Chief Justice.
Krishnaswami Aiyar J.
Ayling J.
1910, *November* 3.

C. M. A. 50 of 1909.

Transfer of Property Act, S. 7—Lease—Signature of the lessee alone—Valid without the lessor's signature.

A lease under the Transfer of Property Act, to be valid, need not be signed by the lessor. [*Turaj Sahib* v. *Esuf Sahib*[1] overruled.]

S. T. Srinivasa Gopalachariar for appellant.

C. V. Anantakrishna Aiyar for respondent.

Krishnaswami Aiyar J.
1910, *November* 10.

Crl. R. C. 33 of 1910.

Penal Code S. 339.*—Locking up the complainant's house unlawfully—Preventing complainant's entry therein—Offence—Presence of accused unnecessary to constitute offence.*

Locking up the complainant's house unlawfully, and preventing him thereby from entering therein, constitutes an offence under S. 339, I. P. C., and the accused's actual presence is not a necessary element in the constitution of the offence.

T. V. Seshagiri Aiyar for petitioner.

The Public Prosecutor (*C. F. Napier*) contra.

Munro J.
Sankaran Nair J.
1910, *November* 11.

C. M. S. A. 70 of 1909.

Limitation Act (1877) *Art.* 164*—Notice under S.* 248*—No process for enforcing judgment.*

---

1. (1907) I. L. R. 30 M. 322.

Notice under S. 248, C. P. C. (Act XIV or 1882) is not a process for enforcing a judgment within the meaning of Article 164 of the Limitation Act of 1877.

G. S. Ramachandraier for appellant.

Ryru Nambiar for respondent.

Abdur Rahim J.
1910, *November* 11. } Crl. R. C. 396 of 1901.

Mischief—Putting up a dam to protect one's lands from being submerged—No intention to annoy, etc.—Conviction illegal.

Where a person put up a dam in his own land to protect his own land from submersion and not to cause mischief or annoyance to any one, a conviction for mischief is illegal.

V. V. Srinivasa Aiyangar for petitioner.

The Public Prosecutor (*C. F. Napier*) contra.

Krishnaswami Aiyar J.
1910, *November* 10. } C. R. P. 38 of 1910.

Decree—Execution—Decree directing sale of chatram lands for debts binding on chatram—No illegality.

A decree directing the sale of chatram lands for a debt binding on chatram is not illegal.

Swaminadhan for petitioner.

N. Rajagopalachari for respondent.

FULL BENCH.
Chief Justice.
Krishnaswamy Aiyar J.
Ayling J.
1910, *November* 14. } S. A. 539 of 1909.

Estates Land Act—S. 3 (7)—*Old waste—Pending actions—"Final decree of a competent Civil Court"—Meaning of.*

A decree against which an appeal is filed is not "a final decree of a competent Civil Court" within themeaning of S. 3, clause 7 (2).

K. Parthasarathy Aiyangar for appellant.

V. Ramesam and *A. Krishnaswami Aiyar* for respondent.

Abdur Rahim J.
Krishnaswami Aiyar J.
1910, *November* 15.
A. S. 217 of 1907.

Limitation Act, Art. 124-*A—Decree merely declaratory of plaintiff's right to an office—Possession of emoluments by defendant adversely to plaintiff for* 12 *years—Effect of.*

A decree merely declaratory of the plaintiff's rights as regards an office in a temple carrying certain emoluments cannot affect the effect of the enjoyment for 12 years of the emoluments by the defendant adversely against the plaintiff which will be to extinguish the plaintiff's right to the office.

T. Narasimha Aiyangar and *N. Rajagopalachari* for appellant.

T. Rangachariar and *G. S. Ramachandra Aiyar* for respondent.

Abdur Rahim J.
1910, *November* 16.
C. R. P. 483 of 1909.

Limitation—Principal debtor and surety—Payment of interest by principal debtor—Limitation not saved as against surety—Liability of each, distinct.

Payment of interest by the principal debtor alone will not save limitation as against the surety; the liabilities of the two persons are distinct.

P. R. Ganapathy Aiyar for petitioner.

N. Rajagopalachari for respondent.

Munro J.
Sankaran Nair J.
1910, *November* 15.
S. A. 466 of 1909.

Grant by the Nabob of the Carnatic—Crown grant—Rule of perpetuities not applicable.

A grant of land by the Nabob of Carnatic is a Crown grant and the rule of perpetuities which invalidates the grant of a land for the purpose of maintaining the tomb of the (Muhammadan) grantee does not apply to such grant.

P. R. Sundara Aiyar and *B. Sitarama Rao* for appellant.

V. C. Seshachari for respondent.

NOTES OF RECENT CASES.

Krishnaswami Aiyar J.
1910, *November* 16. } S. A. 1075 to 1077 of 1910.

Damages for malicious prosecution—Counsel's fees.

In assessing damages for malicious prosecution, fees paid to Counsel for the defence may legitimately be taken into consideration. The fact that Counsel's fees is considered honoraruim for which no suit is maintainable is no reason for not taking it into consideration.

S. Swaminathan for *C. E. Odgers* for appellant.

Abdur Rahim J.
1910, *November* 16. } C. R. P. 131 to 134 of 1909.

Contribution between co-sharers—Claim barred against others at the time of payment—No defence.

In a suit for contribution brought by one co-sharer against the other co-sharers for recovering their quota of rent due to the landlord: *Held* that the fact that at the time the payment was made, the claim against the other co-sharers was barred, was no defence to the suit.

P. Nagabhushanam for petitioner.

V. Ramesam for respondent.

Munro J.
Sankaran Nair J.
1910, *November* 18. } C. M. S. A. 84 of 1909.

C. P. C., S. 47 (*S.* 244, *O. C*).—*Sale of moveables—Fraud.*

A sale of moveables brought about by the fraud of the decree-holder (auction-purchaser) in execution of a decree can be set aside by the Court on application.

P. Kundu Panikar for appellant.

C. Madhavan Nair for respondent.

Krishnaswami Aiyar J.
Ayling J.
1910, *November* 21. } Ref. 5 of 1910.

Limitation Act, Art. 65.—*Principal debtor and surety—Liability of surety—When it arises.*

Where a surety guaranteed for the debtor paying the amount due to the creditor as per accounts, but the creditor who originally took a promissory note renewed it by another pro-note without the knowledge or consent of the surety: *Held* that the liability of the principal debtor arose for each item from the time of borrowing the same and that limitation ran against the surety also at the same time, and that the taking of a pro-note from the principal debtor did not prevent limitation running against the surety.

Venkatasubba Row and *Radhakrishna Aiyar* for plaintiff.

T. S. Rajagopala Aiyar for defendant.

Abdur Rahim J.
1910, *November* 22. } C. R. P. 848 of 1909.

S. 73 of Madras Act I *of* 1889 (*Village Courts Act*)—*Ex-parte decree of Village Munsif—District Munsif cannot set aside.*

A District Munsif cannot set aside a decree of a Village Munsif except on the grounds specified in S. 73 of Act I of 1889 and the fact that the Village Munsif passed a decree *ex-parte* and certain allegations were made against him will not entitle the District Munsif to take evidence, arrive at a different conclusion and set aside the *ex-parte* decree.

C. K. Mahadeva Aiyar for petitioner.

K. Ramachandran for respondent.

Munro J.
Sankaran Nair J.
1910, *November* 22. } Cr. R. C. 134 of 1909.

Cr. P. Code, S. 494—*Person conducting prosecution other than Public Prosecutor, &c.—Can withdraw only with permission.*

No person conducting a prosecution before a Magistrate not being an Advocate-General *** Public Prosecutor or other officer generally or specially empowered by the Local Government in that behalf can withdraw a prosecution without the permission expressly given by the Magistrate.

T. Richmond & Devadoss for petitioner.

Public Prosecutor (*C. F. Napier*) and *S. Venkatachari* contra.

Abdur Rahim J.
Ayling J.
1910, *November* 22.

S. A. 1619 of 1910.

Limitation—Adverse possession against mortgagor and simple mortgagee.

Where the mortgagor is in possession, the mortgage being simple; and is dispossessed by a stranger purporting to prescribe for the absolute ownership of the land, the right of the simple mortgagee is barred after 12 years of such adverse possession.

T. Rangachari for appellant.

K. R. Subrahmania Sastri for respondent.

Abdur Rahim J.
Krishnaswami Aiyar J.
1910, *November* 23.

S. A. 529 of 1907.

Mahomedan Law—Gift of undivided share of property not in possession of donor, bad.

Gift of an undivided share of immoveabe property not in possession of the donor is bad under the Mahomedan Law.

Joseph Satya Nadar for appellant.

T. R. Ramachandra Aiyar, *T. R. Venkatarama Sastri* and *K. B. Ranganadha Aiyar* for respondent.

Munro J.
Sankaran Nair J.
1910, *November* 24.

C. M. S. A. 32 of 1910.

C. P. C., S. 146—*Injunction—Enforceable against purchaser of land.*

An injunction restraining the defendant (owner of a particular house) from preventing the plaintiff using the water of a well, &c., is enforceable against the purchaser of the house from the defendant.

S. Srinivasa Aiyangar and *T. V. Gopalaswami Mudaliar* for appellant.

T. Rangachariar for respondent.

Sankaran Nair J.
Munro J.
1910, *November* 25.
C. M. A. 24 of 1908.

Agent holding a general power of attorney—Principal resident within jurisdiction—Cannot appoint Vakil.

An agent holding a general power of attorney from a principal resident within the Court's jurisdiction cannot appoint a vakil to act on behalf of the principal.

The Advocate-General (*P. S. Sivaswami Aiyar*) and *M. B. Dorasawmi Aiyangar* for appellant.

T. R. Ramachandra Aiyar for respondent.

Krishnaswami Aiyar J.
1910, *November* 25.
C. R. P. 495 of 1909.

Pro-note—Execution without any qualification—Body of note describing executant as honorary manager—Personal liability.

An executant of a pro-note is liable personally thereon if he has executed it without any limitation of his liability, though in the body of the pro-note he is described as an honorary manager (of a temple).

V. Purushotham Aiyar for petitioner.

T. V. Gopalasami Mudaliar and *S. Muthia Mudaliar* for respondents.

Krishnasawmi Aiyar J.
Ayling J.
1910, *December* 2.
S. A. 219 and 220 of 1908.

C. P. C., S. 373—Withdrawal without liberty—Effect of—Defence on the same facts open, though filing a suit barred.

The result of a withdrawal without liberty to bring a fresh suit is only to bar the bringing of a fresh suit by the same person as plaintiff. It does not prevent him from raising a plea on the same facts as a defendant when a suit is brought by the defendant in the former case.

K. Srinivasa Aiyangar and *N. Rajagopalachariar* for appellant.

T. Rangachari and *K. C. Desikachariar* for respondent.

Krishnaswami Aiyar J.
Ayling J.
1910, *December* 2.

A. S. 68 of 1907.

S. 28 (old) C.P.C.—Wrong distribution by executors—Legatee, suit by—Joinder of executors and others—No misjoinder—Same matter—C. P. C., Or. 41, R. 23—S. 24 (new) C.P.C.—Transfer.

A suit by a legatee against executors and others to whom they have wrongly distributed the estate of the testator is not bad for misjoinder as it relates to the same matter within the meaning of S. 28, (old) C. P. C. Overruling an objection by the respondent that when a decree is reversed and the suit is remanded the remand must be to the same Court, their Lordships transferred the case to another Court under S. 24, (new) C. P. C.

T. Rangachari and *R. Kuppuswami Aiyar* for appellant.

S. Srinivasa Aiyangar and *G. Krishnswami Aiyar* for respondent.

Benson J.
Sankaran Nair J.
1910, *December* 8.

S. A. 1359 of 1905.

Ss. 331 and 373, (old) C. P. C.

If a suit to recover lands is allowed as against some and is withdrawn without liberty to bring a fresh suit as against other defendants and if in execution the decree-holder is obstructed by the latter under S. 331, C.P.C., and his application is registered as a suit, S. 373, C.P.C., acts as a bar to the investigation of the suit. What is registered really is the execution application and not the claim of the obstructor. The words 'as a suit' and 'as if a suit had been brought' in S. 331 do not make it any the less a suit for the purposes of S. 373, C.P.C.

N. Rajogopalachariar for appellant.

R. Rangaswami Aiyangar for respondent.

Benson J.
Sankaran Nair J.
1910, *December* 9.

S. A. 375 of 1909.

Res judicata—Alleged benamidar suing as 2nd mortgagee with real owner, party as first mortgagee.

To a suit by *A* as second mortgagee for sale, *B* was made party as first mortgagee and a decree was passed for sale subject to *B*'s mortgage. The decree is attached by *C* a creditor of *A*, and a claim is put in by *B* that *A* was only a benamidar as for *B*. The claim being rejected, *B* sues for a declaration to that effect.

Held :—The question as to the character of *A*'s holding the mortgage is *res judicata* by reason of the suit by *A* on the mortgage.

K. N. Aiya for appellant.

R. Rangasami Aiyangar for respondent.

Wallis J.
on reference from
Chief Justice and
Ayling J.
1910, *December* 20.

Ap. 45 of 1909.

Damages—Breach of contract—Measure of.

Agreeing with the *Chief Justice* and differing from Mr. Justice *Ayling*, Mr. Justice *Wallis* held that damages in a case of breach of contract should be assessed on the difference between the contract rate and the rate prevailing on the date of performance and not on the date of the breach.

P. R. Sundara Aiyar, *V. Ramesam* and *T. Janakiramayya* for appellant.

P. Naraynamurthi for respondent.

Wallis J.
1910, *December* 21.

C. R. P. 230 of 1910.

Limitation Act, Art. 182, *Cl.* (1) & (2)—*Revision dismissed with costs—Starting point for execution of original decree—Whether 'appeal' includes revision.*

The word 'appeal' in Arts. 1 & 2 of the Limitation Act does not include revision. Where a revision has been dismissed with costs, limitation for executing the original decree is from the date of the original decree and that for executing the costs of the revision from the date of judgment on revision.

K. Bhashyam for appellant.

S. T. Srinivasa Gopalachariar for respondent.